DOCKET

SUPREME COURT
OF THE UNITED STATES

No. 10-188
Title: Schindler Elevator Corporation, Petitioner
v.
United States, ex rel. Daniel Kirk
Docketed: August 9, 2010
Linked with 09A1257
Lower Ct: United States Court of Appeals for the Second Circuit
Case Nos.: (09-1678)
Decision Date: April 6, 2010
Questions Presented

---Date---	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~~~~
Jun 23 2010	Application (09A1257) to extend the time to file a petition for a writ of certiorari from July 5, 2010 to August 5, 2010, submitted to Justice Ginsburg.
Jun 24 2010	Application (09A1257) granted by Justice Ginsburg extending the time to file until August 5, 2010.
Aug 5 2010	Petition for a writ of certiorari filed. (Response due September 8, 2010)
Aug 11 2010	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for the petitioner.
Aug 20 2010	Brief of respondent United States, ex rel. Daniel Kirk in opposition filed.
Aug 31 2010	Reply of petitioner Schindler Elevator Corporation filed.
Aug 31 2010	Brief amicus curiae of Equal Employment Advisory Council filed. (Distributed)
Sep 1 2010	DISTRIBUTED for Conference of September 27, 2010.
Sep 1 2010	Brief amicus curiae of Chamber of Commerce of the United States of America filed. (Distributed)
Sep 28 2010	Petition GRANTED. Justice Kagan took no part in the consideration or decision of this petition.
Oct 19 2010	The time to file the joint appendix and petitioner's brief on the merits is extended to and including November 29, 2010.
Oct 19 2010	The time to file respondent's brief on the merits is extended to and including January 18, 2011.
Nov 22 2010	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for the petitioner.
Nov 29 2010	Joint appendix filed. (Statement of costs filed)
Nov 29 2010	Supplemental appendix of Schindler Elevator Corporation filed.
Nov 29 2010	Brief of petitioner Schindler Elevator Corporation filed.
Nov 30 2010	Brief amicus curiae of United Technologies Corporation filed.
Dec 3 2010	Brief amici curiae of Chamber of Commerce of the United States of America, et al. filed.
Dec 6 2010	Brief amicus curiae of Equal Employment Advisory Council filed.
Dec 23 2010	SET FOR ARGUMENT ON Tuesday, March 1, 2011.
Jan 3 2011	CIRCULATED.
Jan 18 2011	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for the respondent.
Jan 18 2011	Brief of respondent Daniel Kirk filed. (Distributed)
Jan 21 2011	Record from the U.S.D.C. for Southern District of New York is electronic.
Jan 24 2011	Record received from U.S.C.A. for Second Circuit. (1 box)
Jan 25 2011	Brief amicus curiae of the United States filed. (Distributed)
Jan 25 2011	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Jan 25 2011	Brief amicus curiae of Taxpayers Against Fraud Education Fund filed. (Distributed)

Jan 25 2011	Brief amicus curiae of AARP filed. (Distributed)
Jan 25 2011	Brief amicus curiae of Public Citizen filed. (Distributed)
Feb 17 2011	Reply of petitioner Schindler Elevator Corporation filed. (Distributed)
Feb 18 2011	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED. Justice Kagan took no part in the consideration or decision of this motion.

PETITION FOR WRIT OF CERTIORARI

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Supreme Court, U.S.
FILED

No. 10-

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IN THE OFFICE OF THE CLERK

Supreme Court of the United States

SCHINDLER ELEVATOR CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA *ex rel.* DANIEL KIRK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a federal agency's response to a Freedom of Information Act request is a "report . . . or investigation" within the meaning of the False Claims Act public disclosure bar, 31 U.S.C. § 3730(e)(4).

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

The parties to the proceeding below are as set forth in the caption of the case.

Petitioner Schindler Elevator Corporation is a direct subsidiary of Schindler Enterprises, Inc., which is in turn a subsidiary of Schindler Holding, Inc., a closely held company based in Switzerland. Schindler Elevator Corporation is not a publicly traded company, and no publicly held company owns more than 10% of its stock.

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceedings and Corporate Disclosure Statement	ii
Table of Contents	iii
Table of Appendices	v
Table of Cited Authorities	vi
Opinions and Orders Below	1
Statement of Jurisdiction	1
Statutory and Regulatory Provisions Involved	1
Statement of the Case	2
Reasons for Granting the Petition	8
I. The Decision Below Widens a Direct, Irreconcilable Conflict Among the Courts of Appeals	10
II. The Scope of the Public Disclosure Bar, Particularly its Application to FOIA Materials, is an Important and Recurring Issue Warranting this Court's Attention	15

Contents

Page

III. The Court of Appeals' Holding that Responses to FOIA Requests Do Not Trigger the Public Disclosure Bar Is Incorrect 21

Conclusion 26

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Second Circuit Decided April 6, 2010 ..... 1a

Appendix B — Opinion And Order Of The United States District Court For The Southern District Of New York Dated March 30, 2009 ..... 49a

Appendix C — Relevant Statutes And Regulations 88a

TABLE OF CITED AUTHORITIES

Page

CASES

Graham County Soil & Water Conservation Dist. v. United States ex. rel. Wilson, 559 U.S. __, 130 S. Ct. 1396 (2010) ..... *passim*

Rockwell International Corp. v. United States, 549 U.S. 457 (2007) 8, 16

United States ex rel. Anti-Discrimination Ctr. of Metropolitan N.Y. v. Westchester County, 495 F. Supp. 2d 375 (S.D.N.Y. 2007) 17

United States ex rel. Atkinson v. Pa. Shipbuilding Co., 473 F.3d 506 (3d Cir. 2007) 17

United States ex rel. Bondy v. Consumer Health Found., 28 F. App'x. 178 (4th Cir. 2001) 10

United States ex rel. Brickman v. Bus. Loan Express LLC, No. Civ. A. 1:05-CV-3147J, 2007 WL 4553474 (N.D. Ga. Dec. 18, 2007) 17

United States ex rel. Brown v. Merant Inc., No. Civ. A. 99-6481, 2002 WL 487160 (E.D. Pa. Mar. 29, 2002) 17

Cited Authorities

Page

United States ex rel. Burns v. A.D. Roe Co.,
186 F.3d 717 (6th Cir. 1999) 11

United States ex rel. Doe v. John Doe Corp.,
960 F.2d 318 (2d Cir. 1992) 25

United States ex rel. Durcholz v. FKW Inc.,
997 F. Supp. 1159 (S.D. Ind. 1998) 17

United States ex rel. Eitel v. Reagan,
898 F. Supp. 734 (D. Or. 1995) 17

United States ex rel. Ervin & Associates v. Hamilton Sec. Group,
332 F. Supp. 2d 1 (D.D.C. 2003) 17

United States ex rel. Farmer v. City of Houston,
No. Civ. A. H-03-3713, 2005 WL 1155111
(S.D. Tex. May 5, 2005) 17

United States ex rel. Fine v. Advanced Sciences,
879 F. Supp. 1092 (D.N.M. 1995) 17

United States. ex rel. Grynberg v. Praxair, Inc.,
389 F.3d 1038 (10th Cir. 2004) 11

United States ex rel. Haight v. Catholic Healthcare West,
445 F.3d 1147 (9th Cir. 2006) 8, 12, 19

Cited Authorities

Page

United State ex rel. Haskins v. Omega Institute, 11 F. Supp. 2d 555 (D.N.J. 1998) 17

United States ex rel. King v. F.E. Moran, Inc., No. 00 Civ. 3877, 2002 WL 2003219 (N.D. Ill. Aug. 29, 2002) 17

United States ex rel. Kirk v. Schindler Elevator Corp., 606 F. Supp. 2d 448 (S.D.N.Y. 2009) 1

United States ex rel. Kirk v. Schindler Elevator Corp., 601 F.3d 94 (2d Cir. 2010) ..... *passim*

United States ex rel. Lamers v. City of Green Bay, 998 F. Supp. 971 (E.D. Wis. 1998), *aff'd*, 168 F.3d 1013 (7th Cir. 1999) 17

United States ex. rel. Marcus v. Hess, 317 U.S. 537 (1943) 3

United States ex rel. Mikes v. Straus, 274 F.3d 687 (2d Cir. 2001) 19

United States ex rel. Mistick v. Housing Auth. of the City of Pittsburgh, 186 F.3d 376 (3d Cir. 1999) ..... *passim*

Cited Authorities

Page

United States ex rel. Ondis v. City of Woonsocket,
587 F.3d 49 (1st Cir. 2009) 8, 11, 19, 24

United States ex rel. Paranich v. Sorgnard,
396 F.3d 326 (3d Cir. 2005) 17

United States ex rel. Pentagen Techs. Int'l Ltd. v. CACI Int'l, Inc.,
No. 94 Civ. 2925 (RLC), 1996 WL 11299
(S.D.N.Y. Jan. 4, 1996) 17

United States ex rel. Reagan v. E. Tex. Medical Ctr. Reg'l Healthcare System,
384 F.3d 168 (5th Cir. 2004) 11

United States ex rel. Richardson v. E-Sys.,
No. 3:90-CV-0607-P, 1999 WL 324666
(N.D. Tex. May 18, 1999) 17

United States ex rel. Rosner v. WB/Stellar IP Owner, L.L.C.,
No. 06 Civ. 7115(SAS), 2010 WL 2670829
(S.D.N.Y. July 2, 2010) 13

United States ex rel. Waris v. Staff Builders Inc.,
No. Civ. A. 96-1969, 1999 WL 788766
(E.D. Pa. Oct. 4, 1999) 17

Page

United States ex rel. Wisconsin v. Dean,
729 F.2d 1100 (7th Cir. 1984) 23

United States ex rel. Yannacopolous v. General Dynamics,
315 F. Supp. 2d 939 (N.D. Ill. 2004) 17

FEDERAL STATUTES

5 U.S.C. § 551(1) 14

5 U.S.C. § 552 ..... 5, 16

28 U.S.C. § 1254(1) 1

31 U.S.C. § 1354 ..... 4, 19

31 U.S.C. § 3729 2

31 U.S.C. § 3730(b) 2, 4

31 U.S.C. § 3730(e) 2

31 U.S.C. § 3730(d) 3

31 U.S.C. § 3730(e)(4) ..... *passim*

38 U.S.C. § 4212 ..... 3, 4

Cited Authorities

Page

RULES

Fed. R. App. P. 28(j) 5

OTHER

40 C.F.R. § 60-250.62 20

48 C.F.R. § 22.1310(b) 4

48 C.F.R. § 52.222-37(c) 4

48 C.F.R. § 52.222-38 4

The Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119, § 10104(j)(2) ... 3, 16

Petitioner Schindler Elevator Corporation ("Schindler") respectfully submits this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals, which is reprinted in the Appendix to the Petition "Pet. App." 1a-48a, is reported at 601 F.3d 94. The opinion of the District Court, reprinted at Pet. App. 49a-87a, is reported at 606 F. Supp. 2d 448.

STATEMENT OF JURISDICTION

The opinion of the Court of Appeals was entered on April 6, 2010. By order dated June 24, 2010, Justice Ginsburg extended Schindler's time to file a petition for a writ of certiorari until August 5, 2010. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The relevant statutory and regulatory provisions are set forth at Pet. App. 88a-117a.

STATEMENT OF THE CASE

In this *qui tam* action brought under the False Claims Act ("FCA"), Respondent Daniel Kirk alleges that Schindler did not comply with reporting requirements imposed by a rarely cited statute known as the Vietnam Era Veterans Readjustment Assistance Act ("VEVRAA"). Kirk's claims are based on information he received from the U.S. Department of Labor in response to requests made under the Freedom of Information Act ("FOIA"). Expressly disagreeing with three other Circuits, the Court of Appeals held that responses to FOIA requests are not "reports" or "investigations" within the meaning of a provision barring FCA claims based on reports or investigations that have been publicly disclosed. Accordingly, the Court of Appeals reversed the district court's order dismissing the action and remanded for further proceedings.

1. a. *The False Claims Act.* The FCA, 31 U.S.C. § 3729 *et seq.*, imposes civil penalties and treble damages on any person who submits "a false or fraudulent claim for payment or approval" to the federal government. 31 U.S.C. § 3729(a)(1). Among the FCA's enforcement measures are *qui tam* provisions, which permit private plaintiffs, or relators, to bring claims in the name of the United States for frauds about which the relators had personal knowledge. See 31 U.S.C. § 3730(b)(1).[1] The incentives for a private citizen to come

1. A *qui tam* complaint must first be filed under seal and served on the government, which has sixty days to decide whether to intervene and proceed with the action. See 31 U.S.C. § 3730(b)(2)-(4). If the government declines to intervene, the relator may then unseal the complaint and prosecute the case on the government's behalf. 31 U.S.C. § 3730(c)(3).

forward with information revealing a fraud are substantial: a relator stands to gain at least 15% and as much as 30% of the government's recovery. 31 U.S.C. § 3730(d).

Along with these hefty rewards comes the danger that opportunistic plaintiffs will bring *qui tam* actions to pursue financial gain even if they have "contributed nothing to the discovery of [the] crime." *United States ex. rel. Marcus v. Hess*, 317 U.S. 537, 545 (1943). To prevent such "parasitic" lawsuits, *Graham County Soil & Water Conservation Dist. v. United States ex. rel. Wilson*, 559 U.S. __, 130 S. Ct. 1396, 1406 (2010), the FCA bars certain *qui tam* claims based on publicly disclosed information. As relevant here, the statute bars FCA actions "based upon the public disclosure of allegations or transactions in a[n] . . . administrative . . . *report* . . . or *investigation* . . . unless the action is brought by the Attorney General or the person bringing the action is an original source of the information."[2] 31 U.S.C. § 3730(e)(4)(A) (emphasis added) (footnote omitted).

b. *The Vietnam Era Veterans Readjustment Assistance Act.* As relevant here, Kirk's complaint alleges that Schindler falsely certified compliance with regulatory reporting requirements imposed by VEVRAA, 38 U.S.C. § 4212. VEVRAA and its

2. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, § 10104(j)(2), enacted March 23, 2010, amended the public disclosure bar in certain respects. The new statutory language is set forth at Pet. App. 105a-106a. As explained *infra* I.3, the amendments are not relevant to the question presented here.

implementing regulations require federal contractors to submit a report to the Secretary of Labor (a "VETS-100 report"), at least annually, stating the number of "qualified covered veterans" they employ. See 38 U.S.C. § 4212(d); 48 C.F.R. §§ 22.1310(b), 52.222-37(c).

A government agency may not, with certain exceptions, enter into contracts with a contractor that has not filed a VETS-100 report for the previous fiscal year, if the contractor was required to do so. See 31 U.S.C. § 1354. And "by submission of its offer, the offeror represents that, if it is subject to the reporting requirements [of VEVRAA] . . . it has submitted the most recent VETS-100 Report required" under the Act. 48 C.F.R. § 52.222-38.

2. Schindler manufactures, installs and maintains elevators and escalators in buildings throughout the world, including some buildings owned or operated by the federal government.

Respondent Kirk is a former Schindler employee. Kirk brought this action under the FCA alleging that between 1998 and 2006 Schindler entered into hundreds of contracts with the federal government that were subject to VEVRAA while failing to comply with certain VEVRAA requirements.[3] In particular, Kirk alleges that for several years during this period, Schindler failed to file any VETS-100 reports as required by VEVRAA. In other years, Kirk alleges, Schindler filed false VETS-100 reports.

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3. As provided for under the FCA, Kirk filed the initial complaint in this case under seal. After the government declined to intervene pursuant to 31 U.S.C. § 3730(b)(4)(B), the complaint was unsealed, and Kirk filed an amended complaint.

Kirk had no personal knowledge of Schindler's VETS-100 filings through his prior employment at the company. Rather, his allegations are based on responses to several requests that his wife, Linda Kirk, made to the Department of Labor ("DOL") pursuant to FOIA, 5 U.S.C. § 552, seeking Schindler's VETS-100 reports for various years. In response to these FOIA requests, a DOL official reported that the Department was unable to locate any VETS-100 reports filed by Schindler for the years 1998 to 2003, and provided Mrs. Kirk with Schindler's VETS-100 reports for the years 2004 to 2006.[4] Based on these responses, Kirk alleges that Schindler failed to file VETS-100 reports from 1998 to 2003. He also alleges that VETS-100 reports filed by Schindler after 2003 contained false information in that they purportedly undercounted the number of covered veterans that Schindler employed.

Kirk's complaint alleges damages to the federal government in excess of $100 million. If such damages were proved, the FCA's treble damages provision would increase Schindler's potential liability to more than $300 million, in addition to the statutory civil penalties ranging from $5,500 to $11,000 for each violation.[5]

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4. DOL also provided several reports for the year ending September 30, 2002. Kirk alleges that because DOL found these reports in 2005, Schindler belatedly filed them.

5. In addition to this FCA action, Kirk filed an administrative complaint against Schindler with the DOL Office of Federal Contract Compliance Programs (OFCCP), alleging violations of VEVRAA. After an investigation, the OFCCP rejected Kirk's complaint in its entirety. The OFCCP's findings were subsequently upheld upon administrative appeal. See Letter from Patsy Baker Blachsear, Director, OFCCP, Division of Program Operations, to Daniel Kirk (Nov. 24, 2009), attached to Kirk's Dec. 4, 2009, Fed. R. App. P. 28(j) letter to the Court of Appeals.

3. Schindler moved to dismiss Kirk's complaint, arguing, *inter alia*, that the FCA's public disclosure bar, 31 U.S.C. § 3730(e)(4), deprived the district court of jurisdiction over certain claims because Kirk's allegations were based on responses to Mrs. Kirk's FOIA requests. The district court granted Schindler's motion in its entirety. The court first held that Kirk's allegations that Schindler had filed false VETS-100 reports failed to state a claim under the FCA because the accuracy of VETS-100 reports is not a condition to payment under the relevant statute and regulations. See Pet. App. 66a-67a.

The court then held that although Kirk's remaining allegations—that Schindler failed to file VETS-100 reports—did state a claim under the FCA, those claims were jurisdictionally barred under the public disclosure bar. Specifically, the court held that: the DOL letters responding to Mrs. Kirk's FOIA requests constituted "administrative . . . report[s] . . . or investigation[s]" within the meaning of 31 U.S.C. § 3730(e)(4); those reports or investigations were "publicly disclosed"; Kirk's allegations were "based upon" the information contained in the FOIA responses; and Kirk was not an "original source" of the information. See Pet. App. 74a, 75a-87a.

4. The Court of Appeals for the Second Circuit vacated the judgment and remanded for further proceedings. The court first considered the jurisdictional issue whether the public disclosure bar applies to FOIA responses, observing that its "sister Circuits are divided on this issue." Pet. App. 2a; see also Pet. App. 17a ("[O]ur sister Circuits have come to

differing conclusions regarding whether materials produced by a government agency pursuant to a FOIA request are administrative reports or investigations within the meaning of the FCA's jurisdictional bar."). After surveying the varying approaches taken by other Circuits, the court rejected the rule adopted by most Courts of Appeals to have considered the question—that FOIA responses are "reports" or "investigations" within the meaning of the public disclosure bar. See Pet. App. 24a-26a. Instead, the court adopted the minority view that whether documents disclosed in response to FOIA requests constitute "reports" or "investigations" depends on the nature of the documents themselves. Pet. App. 23a. Because it determined that the documents turned over in response to Mrs. Kirk's FOIA requests were not themselves administrative "reports" or "investigations," the court concluded that the FCA's jurisdictional bar did not apply to Kirk's claims. Pet. App. 33a.

After determining that it had subject matter jurisdiction, the court then analyzed whether Kirk had stated a claim under the FCA. It held that Kirk had validly stated a claim as to both his allegations that Schindler failed to file certain VETS-100 reports and his allegations that Schindler filed false VETS-100 reports.

REASONS FOR GRANTING THE PETITION

As the Court of Appeals acknowledged, the Circuit courts are in conflict as to whether a response to a FOIA request is a "report" or "investigation" under the FCA. Pet. App. 17a; see also *United States ex rel. Haight v. Catholic Healthcare W.*, 445 F.3d 1147, 1153 (9th Cir. 2006) (acknowledging Circuit split); *United States ex rel. Ondis v. City of Woonsocket*, 587 F.3d 49, 56 (1st Cir. 2009) (same). Two Circuits have expressly rejected the majority view—first articulated by then-Judge Alito in *United States ex rel. Mistick v. Housing Authority of the City of Pittsburgh*, 186 F.3d 376 (3d Cir. 1999)—that FOIA responses constitute "report[s]" or "investigation[s]."

The reach of the FCA's public disclosure bar, and its application to FOIA responses in particular, are important questions meriting this Court's attention. The public disclosure bar, which this Court has construed in two recent cases,[6] is designed to prevent opportunistic lawsuits based on public information while still allowing *qui tam* actions by genuine insiders with firsthand knowledge of fraud. As interpreted by the Second Circuit, the bar does not achieve that important objective: Anyone could use FOIA to attempt to learn whether any federal contractor had filed VETS-100 reports, and if reports were deemed missing, bring an

6. See *Graham County*, 559 U.S. __, 130 S. Ct. 1396 (whether the bar encompasses disclosures from state and local sources as well as federal ones); *Rockwell Int'l Corp. v. United States*, 549 U.S. 457 (2007) (construing the "original source" exception to the bar).

FCA action that mirrors Kirk's. And the use of FOIA is not, of course, limited to assessing compliance with VEVRAA. The same could be done in regard to numerous other statutory or regulatory requirements relating to the payment of government funds under federal contracts or programs. Thus, not surprisingly, the question whether the public disclosure bar applies to FOIA responses has been raised not only in the five cases comprising this Circuit split and three other Court of Appeals decisions that have touched upon it, but in many other cases as well. More will inevitably follow.

Moreover, the Court of Appeals' decision is incorrect. The statutory terms "report" and "investigation" easily encompass FOIA responses, which are the results of a government search for records responsive to FOIA requests. The Second Circuit's holding to the contrary is based, among other things, on the court's erroneous premise that the public disclosure bar should be triggered only by sources indicating that the government itself is actively investigating a potential fraud or is under significant public pressure to do so. It is, however, the *public* nature of the information reported by the government or news media—not the government's treatment of that information as potentially actionable fraud—that implicates the public disclosure bar. 31 U.S.C. § 3730(e)(4)(A). Additionally, the Second Circuit's statutory interpretation cannot be squared with Congressional intent in enacting the public disclosure bar. *Qui tam* relators whose knowledge of an alleged fraud is based on what the government itself publicly reported to them in response to FOIA requests are not persons that Congress deemed deserving of the FCA's extraordinary financial rewards.

I. The Decision Below Widens a Direct, Irreconcilable Conflict Among the Courts of Appeals

The Court of Appeals' decision further entrenches an acknowledged Circuit split as to whether disclosures in response to FOIA requests are "report[s]" or "investigation[s]" within the meaning of the FCA. Three Circuits—the First, Third, and Fifth—have held categorically that a FOIA response is a "report" or "investigation." The Tenth Circuit has likewise held, without extensive analysis, that a FOIA response triggered the public disclosure bar. Two Circuits—the Second and the Ninth—have squarely ruled to the contrary.[7]

1. The majority of courts that have considered the question have adopted the view first articulated by then-Judge Alito in *Mistick*. There, the Third Circuit determined that FOIA responses fall within the "ordinary meaning" or "common understanding" of the terms "report" and "investigation." 186 F.3d at 383-85. A FOIA response is a "report," the court explained, because it "provides information and notification regarding the results of the agency's search for the requested documents and constitutes an official and formal statement concerning those results." *Id.* at 383-84. A FOIA response is an "investigation" because "[w]hen an agency receives a FOIA request, it is

7. In an unpublished decision, the Fourth Circuit also concluded, without analysis, that "FOIA information . . . does not operate as a jurisdictional bar." See *United States ex rel. Bondy v. Consumer Health Found.*, 28 F. App'x. 178, 181 n.2 (4th Cir. 2001).

obligated to conduct a search that is reasonably calculated to uncover all relevant documents." *Id.* at 384.

The Fifth Circuit expressly adopted *Mistick*'s analysis. See *United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168, 176 (5th Cir. 2004) ("we are persuaded by the reasoning of *Mistick* and hold that the response to Reagan's FOIA request is an administrative report").

The First Circuit also recently "adopt[ed] the majority view, and h[e]ld that a FOIA response is an administrative report within the purview of the FCA." *Ondis*, 587 F.3d at 56-75. To hold otherwise, the First Circuit concluded, would "fail[] to lend any independent significance to the act of responding to a FOIA request . . . . [T]he end product of the government's search (locating and compiling the requested documents) independently constitutes an administrative report—and this is so regardless of the character of the underlying documents." *Id.* at 56.

The Tenth Circuit, without citing *Mistick*, also held that a response to a FOIA request triggered the public disclosure bar, although there was apparently no dispute before the Tenth Circuit that the document disclosed pursuant to the FOIA request was a "report" for purposes of the FCA. *United States. ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038, 1049 (10th Cir. 2004).[8]

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8. The Sixth Circuit has noted the FOIA disclosure issue without fully resolving it. See *United States ex rel. Burns v. A.D. Roe Co.*, 186 F.3d 717, 725 (6th Cir. 1999).

2. By contrast, the Ninth Circuit expressly "disagree[d]" with *Mistick*'s analysis, holding instead that "a response to a FOIA request is not necessarily a report or investigation, although it can be, if it is from one of the sources enumerated in the statute." *Haight*, 445 F.3d at 1153, 1156. In the Ninth Circuit's view, "responding to a FOIA request requires little more than duplication," and thus does not "involve extensive governmental work product" necessary to trigger the public disclosure bar. *Id.* at 1153. Treating all FOIA disclosures as "reports" or "investigations" also would be, according to the Ninth Circuit, "out of step with Congress's intentions in amending" the public disclosure bar in 1986. *Id.* at 1154. That amendment revised the statute to bar only *qui tam* actions based on publicly disclosed information from enumerated sources, whereas previously it had barred all *qui tam* actions based on information within the government's possession. The intent of the amendment, according to the court, was to make the bar applicable when "the government could be expected to be aware of information . . . because the information *originated* from the government or involved governmental work product." *Id.* at 1154.

In the decision below, the Second Circuit also considered and expressly rejected *Mistick*'s analysis, agreeing instead with the Ninth Circuit that "the FCA's jurisdictional bar applies only when the [disclosed] document is a 'congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation." Pet. App. 32a. Acknowledging that the statutory language contains "potentially broad terms," the court reasoned that "their meaning is narrowed"

by association with neighboring statutory terms, which, in the court's view, "connote the synthesis of information in an investigatory context." Pet. App. 23a (internal quotation marks and alterations omitted). The court also looked to the statute's legislative history, concluding that permitting FOIA responses to trigger the public disclosure bar "would essentially resurrect, in a significant subset of cases, the government possession standard that Congress repudiated in 1986." Pet. App. 27a-28a. The court found support for its construction from the statutory purpose, stating that the contrary "approach adopted in *Mistick*" would yield a "result that is counterproductive to Congress' goal of striking a balance between encouraging private citizens to expose fraud and avoiding parasitic actions." Pet. App. 28a (internal quotation marks and alterations omitted).

The Second Circuit's decision thus deepens a true conflict among the federal Courts of Appeals. See *United States ex rel. Rosner v. WB/Stellar IP Owner, L.L.C.*, No. 06 Civ. 7115(SAS), 2010 WL 2670829, at *6 n. 88 (S.D.N.Y. July 2, 2010) (noting that *Kirk* "expressly rejected" the reasoning of the First, Third and Fifth Circuits). Unquestionably, had the Second Circuit applied the rule adopted by the First, Third and Fifth Circuits, it would have reached the opposite conclusion: the government's responses to Mrs. Kirk's FOIA requests were "report[s]" or "investigation[s]" within the meaning of the public disclosure bar.

3. This issue would not benefit from further percolation in the lower courts. Both sides of the issue have been extensively analyzed in reported decisions by five Circuits, and three other Circuits have

considered the question as well. The text of the public disclosure bar, its purpose and legislative history, and surrounding policy arguments have been marshaled in support of flatly contradictory results. The conflict has been acknowledged by three different Circuits, each of which meaningfully engaged the reasoning in the divergent authority, and still no consensus has emerged. Instead, the Second Circuit's decision in this case only widens the split between the Courts of Appeals. Only this Court's review can resolve the conflict.

Recent legislation amending the public disclosure bar, see Pet. App. 105a-106a, did nothing to clarify or resolve the issue.[9] The disputed statutory terms—"report" and "investigation"—were left unchanged. As the Second Circuit explicitly noted in this case, it is the construction of these terms that has divided the Courts of Appeals. See Pet. App. 24a ("[W]e find that it strains the natural meaning of the statute to construe the terms 'report' and 'investigation' as broadly as some of our sister Circuits have done."). None of the points of

9. The amendment changed one of the terms modifying "report" and "investigation": The term "Federal" was substituted for "administrative." This change is irrelevant to the question presented here because responses to FOIA requests are, without exception, both "Federal" and "administrative" in nature. FOIA imposes disclosure obligations only on federal "agenc[ies]," defined as "authorit[ies] of the Government of the United States," not including Congress, the courts, and certain other entities. 5 U.S.C. § 551(1). Because FOIA responses are, in all instances, given by federal administrative agencies, substituting the term "Federal" for "administrative" in the public disclosure bar has no effect on the issue presented in this petition.

disagreement regarding the interpretation of "report" or "investigation" is affected by the recent amendment, so there is no need to delay review to allow the Courts of Appeals to consider the question in light of the amended statutory language.

4. This case is an appropriate vehicle to determine whether the government's response to a FOIA request is a "report" or "investigation" for purposes of the FCA. No further factual development or other proceedings are necessary for this Court to resolve this important question dividing the lower courts.

II. The Scope of the Public Disclosure Bar, Particularly its Application to FOIA Materials, is an Important and Recurring Issue Warranting this Court's Attention

The FCA's *qui tam* provisions contain enormous financial incentives for private parties to allege fraud on behalf of the government. The public disclosure bar is designed to ensure that those rewards are available only to relators with firsthand knowledge of the alleged wrongdoing, not relators who base claims on publicly disclosed information. The Court of Appeals' holding that the bar does not apply to claims based on information reported by the government in response to FOIA requests will have far-reaching results. Any person will be able to use FOIA to probe any company's compliance with VEVRAA—or any other statutory or regulatory requirement relating to government payments. And, despite having no independent knowledge of the relevant events, such persons may then bring FCA actions against any company for which they

find evidence of non-compliance, even if the government itself does not view the alleged conduct as deserving of the FCA's draconian penalties.

1. a. As this Court observed last term, the public disclosure bar is intended to achieve "the golden mean between adequate incentives for whistle-blowing insiders with genuinely valuable information and discouragement of opportunistic plaintiffs who have no significant information to contribute of their own." *Graham County*, 559 U.S. __, 130 S. Ct. at 1406 (internal quotation marks omitted). Striking the appropriate balance between these objectives is of critical importance: Too high a bar will preclude meritorious *qui tam* actions by whistle-blowers with independent knowledge of fraud; too low a bar will invite a flood of parasitic lawsuits. Because of the importance of this issue, the scope of the public disclosure bar has recently occupied both this Court and the Congress. See *Graham County*, 559 U.S. at __, 130 S. Ct. at 1396; *Rockwell*, 549 U.S. at 457; The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, § 10104(j)(2).

b. FOIA, which is designed to ensure that federal agencies make information "available to the public," 5 U.S.C. § 552(a), implicates the public disclosure bar in myriad contexts. The statute is rendered in broad terms: FOIA requires federal agencies to disclose extensive information regarding the government's activities to any member of the public, unless the material falls into one of a few, narrowly construed exceptions.

Because of the breadth of information made public under FOIA, disputes as to whether FOIA responses trigger the public disclosure bar surface in a wide range of contexts, and do so frequently. In addition to the eight Circuit Court decisions addressing the issue that were previously cited in this Petition, at least seventeen other federal court decisions have considered it.[10] More will

10. See *United States ex rel. Atkinson v. Pa. Shipbuilding Co.*, 473 F.3d 506 (3d Cir. 2007); *United States ex rel. Paranich v. Sorgnard*, 396 F.3d 326, 334 (3d Cir. 2005); *United States ex rel. Brickman v. Bus. Loan Express LLC*, No. Civ. A. 1:05-CV-3147J, 2007 WL 4553474 (N.D. Ga. Dec. 18, 2007), *aff'd*, 310 F. App'x 322 (11th Cir. 2009); *United States ex rel. Anti-Discrimination Ctr. of Metro N.Y. v. Westchester County*, 495 F. Supp. 2d 375 (S.D.N.Y. 2007); *United States ex rel. Farmer v. City of Houston*, No. Civ. A. H-03-3713, 2005 WL 1155111 (S.D. Tex. May 5, 2005); *United States ex rel. Yannacopolous v. Gen. Dynamics*, 315 F. Supp. 2d 939 (N.D. Ill. 2004); *United States ex rel. Ervin & Assocs. v. Hamilton Sec. Group*, 332 F. Supp. 2d 1 (D.D.C. 2003); *United States ex rel. King v. F.E. Moran, Inc.*, No. 00 Civ. 3877, 2002 WL 2003219 (N.D. Ill. Aug. 29, 2002); *United States ex rel. Brown v. Merant Inc.*, No. Civ. A. 99-6481, 2002 WL 487160 (E.D. Pa. Mar. 29, 2002); *United States ex rel. Waris v. Staff Builders Inc.*, No. Civ. A. 96-1969, 1999 WL 788766 (E.D. Pa. Oct. 4, 1999); *United States ex rel. Richardson v. E-Sys.*, No. 3:90-CV-0607-P, 1999 WL 324666 (N.D. Tex. May 18, 1999); *United State ex rel. Haskins v. Omega Inst.*, 11 F. Supp. 2d 555 (D.N.J. 1998); *United States ex rel. Durcholz v. FKW Inc.*, 997 F. Supp. 1159 (S.D. Ind. 1998), *aff'd*, 189 F.3d 542 (7th Cir. 1999); *United States ex rel. Lamers v. City of Green Bay*, 998 F. Supp. 971 (E.D. Wis. 1998), *aff'd*, 168 F.3d 1013 (7th Cir. 1999); *United States ex rel. Pentagen Techs. Int'l Ltd. v. CACI Int'l, Inc.*, No. 94 Civ. 2925 (RLC), 1996 WL 11299 (S.D.N.Y. Jan. 4, 1996); *United States ex rel. Eitel v. Reagan*, 898 F. Supp. 734 (D. Or. 1995); *United States ex rel. Fine v. Advanced Scis.*, 879 F. Supp. 1092 (D.N.M. 1995), *aff'd*, 99 F.3d 1000 (10th Cir. 1996).

inevitably follow, leading to yet more disparate results and further confusion.

2. As this case illustrates, permitting FCA claims to proceed when based on information disclosed pursuant to FOIA requests has significant ramifications. In the VEVRAA context alone, allowing the Second Circuit's decision to stand would mean that any individual could file an FCA action alleging that a federal contractor did not file required VETS-100 reports based solely on a FOIA response reporting that no VETS-100 reports were found. Kirk's complaint against Schindler alleges liability of more than $300 million. Analogous complaints against entities that do more business with the government could seek even greater sums, with the relator retaining up to 30% of any recovery.

The relators in such suits would not be limited to whistle-blowers with independent knowledge of an alleged fraud. A person who had no prior acquaintance with a federal contractor or its practices could bring an FCA action against it merely because the DOL reported, in response to a FOIA request, that the contractor's VETS-100 reports could not be located—just as, in this case, "the DOL's responses to the Kirks' FOIA requests served as Kirk's sole basis for concluding that Schindler failed to file VETS-100 reports." Pet. App. 85a n.16.

The use of FOIA to discover grounds for FCA claims is, of course, not limited to cases involving VEVRAA. FOIA requests could be submitted to test compliance with a wide range of regulatory requirements potentially giving rise to FCA actions, as illustrated by the numerous other cases addressing whether FOIA

disclosures trigger the public disclosure bar. See, e.g., *Ondis*, 587 F.3d at 52 (FCA claim based on FOIA request for a city's federal grant applications for public works projects); *Haight*, 445 F.3d at 1149 (FCA claim based on FOIA request for a medical grant application and research); *Mistick*, 186 F.3d at 381 (FCA claim based on FOIA request for letters relating to a government-funded lead abatement project).

These potential applications of FOIA are multiplied significantly by an interpretation of the FCA by some Courts of Appeals that permits FCA liability to attach to so-called "legally false" claims—*i.e.*, claims "predicated upon a false representation of compliance with a federal statute or regulation or a prescribed contractual term," where compliance is a condition to receipt of a government payment. *United States ex rel. Mikes v. Straus*, 274 F.3d 687, 696 (2d Cir. 2001).[11] Such liability, which appears to have never been considered by this Court, may be found even when the underlying statute or regulation contains its own enforcement mechanisms, with penalties far less severe than those available under the FCA.

VEVRAA is such a statute. Its prohibition against payment to contractors that have not filed required VETS-100 reports contains a cure provision: It "cease[s] to apply . . . on the date on which the contractor submits the report." 31 U.S.C. § 1354(a)(2). Administrative

11. Such "legally false" certification "differs from 'factually false' certification," also prohibited by the FCA, "which involves an incorrect description of goods or services provided or a request for reimbursement for goods or services never provided." *Mikes*, 274 F.3d at 697.

remedies for material violations of VEVRAA include, among others, entry into conciliation agreements "if the contractor is willing to correct the violations and/or deficiencies." 40 C.F.R. § 60-250.62. It does not appear that the federal government has ever invoked the FCA to penalize a contractor for non-compliance with VEVRAA, including non-compliance relating to the filing of VETS-100 reports.

Private parties, however, will not utilize a more calibrated enforcement mechanism when an FCA claim might be available. They will not, as the government would, account for the possibilities that the FCA's draconian penalties may be unfair in relation to the gravity of the alleged regulatory non-compliance; or that the risk of such excessive penalties will deter companies from contracting with the government or induce them to charge the government higher prices to offset the risk, raising the government's costs of doing business. Rather, private parties will trundle out the heavy artillery of the FCA in every case in order to obtain the extraordinary financial rewards that the FCA makes available to *qui tam* relators. Here, in a case where the government declined to intervene, Kirk alleges that the government is entitled to recover more than $300 million. That amount, if awarded, may well be an unconstitutionally excessive fine for non-compliance with a regulatory requirement that has a cure provision, in a case in which there is no claim that the government did not receive the precise goods and services it paid for.

The Second Circuit's decision also means that FCA liability could attach even where the substance of a statutory reporting requirement—here, the number

of employed veterans—has no bearing on the government's payment decision. Here, for example, there is no requirement that a contractor employ a given number or percentage of veterans to receive payment. Nevertheless, under the Second Circuit's decision, FCA liability may still be imposed on a contractor's non-compliance with such a reporting requirement.

After the Second Circuit's decision here, relators need not base such FCA claims on any independent knowledge of the conduct alleged in the complaint. Any person, after obtaining a list of federal contractors from public sources, may, through FOIA, request the contractors' VETS-100 reports and then file FCA actions against any contractor whose reports are not found. They may do the same to monitor compliance with other statutory or regulatory requirements that could support a "legally false" theory of FCA liability.

III. The Court of Appeals' Holding that Responses to FOIA Requests Do Not Trigger the Public Disclosure Bar Is Incorrect

The government's response to a FOIA request constitutes a "report" or "investigation," as those terms are commonly used. The Court of Appeals, however, did not afford the disputed terms their ordinary meanings. Instead, the court gave the statute an unacceptably narrow reading that neither its text nor its purpose permit.

1. As demonstrated in then-Judge Alito's opinion in *Mistick*, the government's response to a FOIA request fits comfortably within the ordinary meanings

of "report" and "investigation." See 186 F.3d at 383-84. Such responses constitute the government's official notification, or "report," of the results of its search for documents responsive to the FOIA request. *Id.* And the government must examine, or "investigate," its records in order to find responsive documents and to determine whether any of FOIA's exceptions apply. *Id.* at 384. Not surprisingly, this interpretation of the FCA—grounded in well-accepted dictionary definitions and a "common understanding" of the ordinary usage of the terms "report" and "investigation"—has won the support of the majority of Circuits that have analyzed the issue.

The Second Circuit's contrary reading of the statute is not persuasive. It concluded that the meanings of "report" and "investigation" should be "narrowed" by application of the canon of *noscitur a sociis*, because the neighboring statutory terms purportedly connote a synthesis of information or analysis by the government. Pet. App. 23a. As an initial matter, the standard, even so narrowed, should have been deemed satisfied here because the government did synthesize information when responding to the Kirks' FOIA requests in this case. Among other things, it concluded, and reported to the Kirks, that it did not possess Schindler's VETS-100 reports for certain years, and its report of that conclusion is Kirk's sole ground for alleging that Schindler failed to file such reports.

In any event, just as in *Graham County*, the use of *noscitur a sociis* does not illuminate the meaning of the disputed text. Here, as there, "[t]he substantive connection, or fit, between the [statutory] terms . . . is not so tight or so self-evident as to demand that [the

Court] rob any one of them of its independent and ordinary significance." *Graham County*, 559 U.S. at __, 130 S. Ct. at 1403. This is especially so because "*all* of the sources listed in §3730(e)(4)(A) provide interpretive guidance," and one of those sources, "the news media," obviously does not require any synthesis of information or analysis by the government. *Id.* at __, 130 S. Ct. at 1404; see *id.* (rejecting argument, based on *noscitur a sociis*, that the term "administrative" in the public disclosure bar applies only to federal agency action because, *inter alia*, "[t]he 'news media' . . . plainly have a broader sweep").

2. The Second Circuit also mistakenly relied on the public disclosure bar's history and purpose to support its conclusion that FOIA responses are not "report[s]" or "investigation[s]."

What the Court of Appeals found "most problematic" about the approach taken by *Mistick* was that it supposedly reinstates in many cases the "government possession" standard in place before the 1986 amendment to the FCA. Pet. App. at 27a-28a. But *Mistick* does no such thing. Under the "government possession" standard, *qui tam* claims were barred if based on information possessed by the government, even if the government first learned the information from the relator himself. See *United States ex rel. Wisconsin v. Dean*, 729 F.2d 1100, 1102-06 (7th Cir. 1984). *Mistick* does not resurrect that standard. It continues to require, as first set forth in the 1986 amendment, that the information be publicly disclosed (not merely possessed) by the government or that it be disclosed by the news media; that disclosures by the

government be contained in certain enumerated sources; and that the bar is inapplicable if the relator is an original source of the information.

It is, in fact, the Court of Appeals' decision in this case, not *Mistick*, that misapprehends Congress' intent in enacting the 1986 amendment. The Second Circuit sought to ensure that the public disclosure bar would not preclude an FCA claim by a plaintiff who used FOIA to discover a "key piece of information" relating to the alleged fraud. Pet. App. 28a. But under the balance struck by the 1986 amendment, a plaintiff who must resort to such public channels for "key" information does not have independent knowledge deserving of the extraordinary financial rewards provided to *qui tam* relators. See *Ondis*, 587 F.3d at 56 ("An individual who obtains information through FOIA disclosures in order to uncover fraud is not a person with firsthand knowledge (and, thus, not a person whom Congress chose to reward under the FCA).").

The government, as amicus curiae in this case, argued—and the Second Circuit agreed—that the public disclosure bar should apply only when "the government is either actively investigating the alleged fraud or . . . there is sufficient public awareness of the allegations to pressure the government to start an investigation." Pet. App. 30a. Whatever the merits of this test, it is not the one that Congress enacted. Rather, it is the public nature of information, not the government's commencement of an investigation, which makes the information unsuitable as a basis for a *qui*

tam action. As this Court put it, "[t]he statutory touchstone . . . is whether the allegations of fraud have been 'publicly disclosed,' not whether they have landed on the desk of a DOJ lawyer." *Graham County*, 559 U.S. at __, 130 S. Ct. at 1410.

An earlier Second Circuit decision recognizes the true intent of the public disclosure bar: It "was designed to preclude *qui tam* suits based upon information that would have been equally available to strangers to the fraud transaction had they chosen to look for it as it was to the relator." *United States ex rel. Doe v. John Doe Corp.*, 960 F.2d 318, 322 (2d Cir. 1992) (internal quotation marks and citation omitted). *Mistick* gives effect to this intent; the Second Circuit's decision here conflicts with it. This Court should grant review to ensure that the correct interpretation of the FCA's public disclosure bar is applied uniformly among the Circuits.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari to the Second Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DECIDED APRIL 6, 2010

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

Docket No. 09-1678-cv

UNITED STATES OF AMERICA *ex rel.* DANIEL KIRK,

Plaintiff-Appellant,

v.

SCHINDLER ELEVATOR CORPORATION,

Defendant-Appellee.

Argued: Dec. 10, 2009
Decided: April 6, 2010

Before: McLAUGHLIN, KATZMANN, and LYNCH, Circuit Judges.

KATZMANN, Circuit Judge:

The Vietnam Era Veterans Readjustment Assistance Act ("VEVRAA"), 38 U.S.C. § 4212, requires contractors doing business with federal government entities to submit annual reports to the Secretary of Labor providing information about the number of veterans employed by the contractor (the "VETS-100

reports"). Plaintiff-Appellant Daniel Kirk brought this *qui tam* action on behalf of the United States government under the False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq.*, alleging that his former employer, Defendant-Appellee Schindler Elevator Corp.. ("Schindler"), obtained government contracts while representing that it had filed the required VETS-100 reports, when in fact it either had failed to file a report or had filed a false report for the relevant years. Kirk based his allegations in large part on information he obtained after submitting requests under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

This case calls on us to decide a question of first impression in this Circuit: whether the FCA's jurisdictional bar, 31 U.S.C. § 3730(e)(4)(A), which provides that "[n]o court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in ... a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation," applies when the plaintiff's allegations are based on materials produced in response to a FOIA request. Our sister Circuits are divided on this issue. If the jurisdictional bar does not apply, this case also presents the question whether Schindler may be held liable under the FCA for (1) failing to file VETS-100 reports, and (2) filing false VETS-100 reports.

We hold that the answer to the question whether a document obtained in response to a FOIA request qualifies as an enumerated source under 31 U.S.C.

§ 3730(e)(4)(A) depends on the nature of the document itself; the FCA's jurisdictional bar applies only when the document is a "congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation." We further hold that Kirk stated valid claims under the FCA when he alleged that (1) Schindler had failed to file VETS-100 reports for certain years, and (2) Schindler had filed false VETS-100 reports for certain years. We vacate the judgment of the district court and remand for further proceedings consistent with this opinion.

BACKGROUND

The FCA is designed to help combat fraud against the federal government by persons who provide goods and services to it. *See United States ex rel. Doe v. John Doe Corp.*, 960 F.2d 318, 319 (2d Cir.1992). It establishes liability for persons who submit false claims for payment to the government, 31 U.S.C. § 3729(a)(1), and it contains a variety of measures designed to enhance deterrence and enforcement. These include, for example, a treble damages provision, *id.*, and-central to this case-*qui tam* provisions that allow private citizens who learn of fraud to bring suit in the name of the government and to share in any recovery, *id.* § 3730(b)-(d). Plaintiff-relator Daniel Kirk brought such an action based on his belief that his employer, Schindler, had obtained contracts and payments from the federal government while failing to comply with the requirements of VEVRAA.

Appendix A

Kirk served in the United States Army from 1969 to 1971, performing part of his service in Vietnam. In 1978, he took a job at Millar Elevator Industries, Inc. ("Millar"). Millar was bought by Schindler in 1989, but the two companies operated separately until 2002. In the years preceding 2002, Kirk was promoted several times, eventually (in 2001) becoming Vice President responsible for the Modernization, Repair, and Maintenance Support Departments of Millar. After Schindler integrated Millar's operations into its own in 2002, Kirk was initially named Schindler's Regional Modernization Manager for New York City and Long Island, in which capacity he managed over 100 employees. In July 2003, however, Kirk discovered, apparently without being informed directly, that he was being demoted to the non-managerial position of Field Superintendent. He resigned from Schindler in August 2003.

In April 2004, Kirk filed a complaint with the Office of Federal Contract Compliance Programs ("OFCCP") at the Department of Labor ("DOL"), claiming that he had been improperly demoted and constructively terminated by Schindler despite the fact that he was a Vietnam veteran in violation of VEVRAA. The OFCCP provided Schindler with a copy of Kirk's complaint and began an investigation of Schindler's compliance with VEVRAA. In February 2005, OFCCP found that there was insufficient evidence to support Kirk's claim. Kirk appealed this finding, and in November 2009, the DOL

affirmed the OFCCP's finding that Schindler had not violated VEVRAA when it took an adverse employment action against him.

In March 2005, meanwhile, Kirk filed the instant case under the FCA in the name of the U.S. government. As provided for by the FCA, *see* 31 U.S.C. § 3730(b), the case was initially filed under seal; in June 2007, after the government had decided not to intervene, the action was unsealed and Kirk was permitted to pursue it as relator. He then filed the Amended Complaint.

Before turning to the factual allegations in the Amended Complaint, it is useful to review the relevant requirements of VEVRAA. VEVRAA and its accompanying regulations impose several specific requirements on contracts "entered into by any department or agency of the United States for the procurement of personal property and nonpersonal services (including construction)," when the value of the contract exceeds a certain monetary threshold.[1] 38 U.S.C. § 4212(a)(1). Contracts subject to VEVRAA

1. The monetary threshold at which VEVRAA becomes applicable to a contract has changed several times during the time period relevant to this lawsuit. For contracts signed before November 13, 2001, the minimum amount of a contract subject to VEVRAA was $10,000; for contracts signed on or after November 13, 2001 and before September 28, 2006, the minimum amount was $25,000; and for contracts signed on or after September 28, 2006, the minimum amount is $100,000. 66 Fed.Reg. 51,998, 51,998 (Oct. 11, 2001); 71 Fed.Reg. 57,363, 57,369 (Sept. 28, 2006) (amending 48 C.F.R. § 52.222-37).

must contain provisions obligating the contractor (1) to "take affirmative action to employ and advance in employment qualified covered veterans,"[2] 38 U.S.C. § 4212(a)(1); (2) to invite eligible veterans to identify themselves voluntarily to their employer, 48 C.F.R. §§ 22.1310(b), 52.222-37(e); and (3) to submit annual reports to the Secretary of Labor (the "VETS-100 reports") providing data about the qualified covered veterans in the contractor's workforce, including the number of qualified covered veterans in each job category and hiring location and the number of new employees who are qualified covered veterans, 38 U.S.C. § 4212(d); 48 C.F.R. §§ 22.1310(b), 52.222-37(c).

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2. The term "covered veteran" designates

(i) Disabled veterans.

(ii) Veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized.

(iii) Veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order No. 12985 (61 Fed.Reg. 1209).

(iv) Recently separated veterans.

38 U.S.C. § 4212(a)(3)(A). "The term 'qualified,' with respect to an employment position, means having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability." *Id.* § 4212(a)(3)(B).

Appendix A

In 1998, Congress passed the Veterans Employment Opportunities Act, 31 U.S.C. § 1354, which provides that "no agency may obligate or expend funds . . . to enter into a contract [covered by VEVRAA] with a contractor from which a [VETS-100] report was required. . . if such contractor did not submit such report," *id.* § 1354(a)(1). In turn, 48 C.F.R. § 52.222-38 provides that "[b]y submission of its offer, the offeror represents that, if it is subject to the reporting requirements [of VEVRAA] . . . it has submitted the most recent VETS-100 Report required by [the Act]." This regulation issued in October 2001 and became effective December 21, 2001. *See* 66 Fed.Reg. 53,487-01, 53,487 (Oct. 22, 2001).

Kirk's Amended Complaint alleges that Schindler, while entering into numerous contracts with the federal government that were subject to the requirements of VEVRAA, failed to comply with it in several salient ways. Because the district court dismissed the complaint under Fed.R.Civ.P. 12(b)(6) and 12(b)(1), we accept as true the material facts alleged in the complaint and draw all reasonable inferences in Kirk's favor. *Sharkey v. Quarantillo*, 541 F.3d 75, 83 (2d Cir.2008); *Freedom Holdings, Inc. v. Spitzer*, 363 F.3d 149, 151 (2d Cir.2004).

Kirk alleges that from 1998 to the present, he was never asked to identify himself as a veteran and that when Schindler integrated its operations with Millar's, the approximately 400 former Millar employees were not given an opportunity to self-identify as veterans. He further alleges that as a manager of 100 employees at Schindler with responsibility for hirings, firings, and

promotions, he was never informed of any affirmative action program aiding veterans. A copy of Schindler's employee manual makes no reference to an affirmative action program for veterans.

In addition, Kirk alleges that Schindler failed to submit VETS-100 reports from 1998 until late 2004 and that the reports it did file in 2004, 2005, and 2006 are false. These latter allegations are based in significant part on the results of several FOIA requests submitted to the DOL by his wife, Linda Kirk. In November 2004, Mrs. Kirk submitted a FOIA request seeking copies of any VETS-100 reports filed by Schindler for the years 2002, 2003, or 2004. In a letter dated February 11, 2005, the Office of the Assistant Secretary for Veterans Employment and Training informed Mrs. Kirk that the DOL had located no VETS-100 reports from 2002 or 2003 and enclosing copies of three VETS-100 reports filed by Schindler in 2004. In January 2005, Mrs. Kirk submitted a second FOIA request seeking copies of any VETS-100 reports filed by Schindler for the years 1998, 1999, 2000, and 2001. By letter dated September 29, 2005, the Office of the Assistant Secretary for Veterans Employment and Training informed her that the DOL had located no VETS-100 reports for 1998, 1999, or 2000, but enclosed copies of 28 VETS-100 reports filed by Schindler for the 12-month period ending September 30, 2002.[3] Finally, in April 2007, Mrs. Kirk submitted a

3. The applicable regulations require that VETS-100 reports be filed no later than September 30 of each year, 48 C.F.R. § 52.222-37(c), and that they report on the number of

(Cont'd)

third FOIA request to the DOL, this time seeking copies of any VETS-100 reports filed by Schindler for the years 2005 and 2006. Under cover of a letter dated May 14, 2007, the Office of the Assistant Secretary for Veterans Employment and Training provided copies of 19 VETS-100 reports filed in 2005 and 49 filed in 2006.

> This ambiguity makes it unclear whether the September 29, 2005 response to Mrs. Kirk's second FOIA request is complete, in that no mention is made of VETS-100 reports filed in 2001. The reports filed in 2002 do cover some portion of 2001 and in this way are responsive to Mrs. Kirk's request for VETS-100 reports "*for*" 2001. However, the September 29, 2005 letter does not explicitly state that the DOL located no reports filed *in* 2001, and it is conceivable that while such reports did exist, it understood the production of the 2002 reports to satisfy Mrs. Kirk's request. Drawing all reasonable inferences in light of the plaintiff, however, we conclude that the DOL located no reports filed in 2001.

(Cont'd)
veterans in the employer's workforce in various categories during the 12-month period preceding a date chosen by the employer but falling between July 1 and August 31, *id.* § 52.222-37(d). The parties, and the FOIA responses from the DOL, generally refer to a VETS-100 report "for" a given year, but we note that under the regulations the report filed *in* a given year necessarily covers a 12-month period extending into two calendar years and is not, strictly speaking, the report *for* the year in which it was filed.

On the basis of these facts, Kirk alleged that Schindler was not in compliance with VEVRAA in that it (1) did not offer its employees the opportunity to identify themselves as Vietnam-era veterans, (2) failed to implement an affirmative action program aiding covered veterans, and (3) failed to file VETS-100 reports for the years 1998 through 2003, and filed false VETS-100 reports for 2002, 2004, 2005, and 2006. Kirk based his allegation that Schindler did not file VETS-100 reports in 1998-2003 on the responses Mrs. Kirk received to her FOIA requests; with regard to the 2002 reports, Kirk alleged that the fact that these reports were not produced in response to Mrs. Kirk's November 2004 request but were eventually produced in response to her January 2005 request indicates that the 2002 reports were belatedly filed. Kirk also alleged that the 2002 reports were, in any event, false. Kirk's allegation that Schindler's 2002, 2004, 2005, and 2006 VETS-100 reports were false was based on his comparison of the information contained in the reports produced pursuant to Mrs. Kirk's FOIA request with his personal knowledge of Schindler's operations. For example, he alleged that while the 2004 reports cover only eighteen unspecified locations, Schindler has more than eighteen locations in the United States. He also alleged that while the 2004, 2005, and 2006 reports listed no covered veterans who are technicians or craft workers in New York, he personally knows (and named in the complaint) a number of covered veterans working for Schindler in those job categories. Moreover, he alleged, the filed reports must be false because, as his personal experience demonstrated, Schindler never asked Vietnam-era veterans to self-identify.

Appendix A

During the years in which Schindler was not in compliance with VEVRAA, Kirk alleged, it entered into hundreds of contracts with the federal government that were subject to VEVRAA's requirements. Appended to the Amended Complaint are lists of specific contracts between Schindler and various agencies of the U.S. government dating from 1999 to the time the Amended Complaint was filed in 2007, all of which exceed VEVRAA's minimum value. Kirk charged that each claim for payment submitted by Schindler under one of these contracts was a false claim within the terms of the FCA.

In September 2007, Schindler filed a motion to dismiss the Amended Complaint. The three stated grounds for Schindler's motion were (1) that under the jurisdictional provision of the FCA, 31 U.S.C. § 3730(e)(4), the district court lacked jurisdiction over Kirk's suit because the information on which his allegations were based-specifically, the information garnered through Mrs. Kirk's FOIA requests-had been publicly disclosed, (2) that Kirk had failed to plead his fraud claims with adequate specificity under Fed.R.Civ.P. 9(b), and (3) that in light of Kirk's pending complaint before the OFCCP, the district court should defer to the agency and dismiss the action under the doctrine of "primary jurisdiction." The district court granted Schindler's motion to dismiss. First, the district court found that there could be no liability for those of Kirk's allegations that were based on Schindler's filing of false or inaccurate VETS-100 reports because Schindler never certified the accuracy of the reports. Second, the district court assessed the applicability of the FCA's

jurisdictional bar to Kirk's remaining claims. Recognizing that it faced a question that had not been decided in this Circuit, the district court found that the FOIA reports constituted a "public disclosure" via one of the sources enumerated in 31 U.S.C. § 3730(e)(4)(A). It concluded, accordingly, that it lacked jurisdiction to consider Kirk's claims based on Schindler's failure to file VETS-100 reports because all of the material information on which these claims were based was contained in the DOL's responses to Mrs. Kirk's FOIA requests.

This appeal followed.

DISCUSSION

While the district court addressed the question of subject matter jurisdiction only after concluding that Kirk's claims with respect to the allegedly false or inaccurate VETS-100 reports were not viable under the FCA, "the first question for an appellate court ordinarily is that of its jurisdiction and the jurisdiction of the lower court in the cause under review." *Monegasque De Reassurances S.A.M. v. Nak Naftogaz of Ukraine*, 311 F.3d 488, 497 (2d Cir.2002); *see also United States ex rel. Kreindler & Kreindler v. United Techs. Corp.*, 985 F.2d 1148, 1155-56 (2d Cir.1993) (citing *Rhulen Agency, Inc. v. Ala. Ins. Guar. Ass'n*, 896 F.2d 674, 678 (2d Cir.1990)) (stating, in the context of a suit under the FCA, that "[w]here . . . the defendant moves for dismissal under Rule 12(b)(1), . . . as well as on other grounds, the court should consider the Rule 12(b)(1) challenge first

since if it must dismiss the complaint for lack of subject matter jurisdiction, the accompanying defenses and objections become moot and do not need to be determined" (internal quotation marks omitted)). Accordingly, we first analyze whether the FCA's jurisdictional bar is applicable here.

I. Subject Matter Jurisdiction

We review a district court's determination of subject matter jurisdiction *de novo*. *DiTolla v. Doral Dental IPA of N. Y.*, 469 F.3d 271, 275 (2d Cir.2006).

Title 31, Section 3730(e)(4)(A) of the United States Code provides that

> No court shall have jurisdiction over an action under [the FCA] based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.[4]

4. This provision has recently been amended to specify that in order for the jurisdictional bar to apply, "substantially the same allegations or transactions" must be publicly disclosed in a *federal* criminal, civil, or administrative hearing, a congressional, Government Accountability Office, or other

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Appendix A

As we have previously explained, in order for the FCA's jurisdictional bar to apply there must be "public disclosure" of the information on which the allegation of fraud rests, and this "public disclosure" must occur through one of the sources enumerated in the statute. *Doe*, 960 F.2d at 322-23. In addition, the statute indicates that the public disclosure (via an enumerated source) must be of the material elements of the "allegations or transactions" on which the claim is based. 31 U.S.C. § 3730(e)(4)(A); *see United States ex rel. Fowler v. Caremark RX, L.L.C.*, 496 F.3d 730, 736 (7th Cir.2007) (stating that "[a] 'public disclosure' exists under § 3730(e)(4)(A) when the critical elements exposing the transaction as fraudulent are placed in the public domain" (internal quotation marks omitted)), *overruled on other grounds by Glaser v. Wound Care Consultants*, 570 F.3d 907 (7th Cir.2009); *United States ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038, 1049-51 (10th Cir.2004) (finding that "allegations or transactions" have been disclosed when "[a]ll of the material elements of the fraudulent transaction were already in the public domain"); *United States ex rel. Springfield Terminal*

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federal report, hearing, audit, or investigation, or by the news media. Patient Protection and Affordable Care Act, Pub.L. 111-148, § 10104(j)(2), 124 Stat. 119 (2010). Because this amendment was not made retroactive, *see Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 130 S.Ct. 1396, 1400 n. 1 (2010), we do not address the new statutory language here. Throughout this opinion, we will use the present tense to refer to the version of the statute that applies in this case.

Ry. Co. v. Quinn, 14 F.3d 645, 654 (D.C.Cir.1994) ("The language employed in § 3730(e)(4)(A) suggests that Congress sought to prohibit *qui tam* actions *only* when either the allegation of fraud or the critical elements of the fraudulent transaction themselves were in the public domain."). If it is established that the allegations or transactions at issue were publicly disclosed through an enumerated source, a *qui tam* plaintiff may avoid dismissal under the jurisdictional bar by establishing that she was an "original source" of the relevant information. *Kreindler*, 985 F.2d at 1158-59. The statute defines an "original source" as one who "has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information." 31 U.S.C. § 3730(e)(4)(B).

Kirk does not concede that the information contained in the responses Mrs. Kirk received to her FOIA requests was "publicly disclosed." However, every circuit to have considered this issue has determined that information produced in response to a FOIA request becomes public once it is received by the requester. *United States ex rel. Ondis v. City of Woonsocket*, 587 F.3d 49, 55 (1st Cir.2009); *United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168, 175-76 (5th Cir.2004); *United States ex rel. Mistick PBT v. Hous. Auth. of Pittsburgh*, 186 F.3d 376, 383 (3d Cir.1999); *United States ex rel. Burns v. A.D. Roe Co., Inc.*, 186 F.3d 717, 723-24 (6th Cir.1999); *United States ex rel. Schumer v. Hughes Aircraft Co.*, 63 F.3d 1512,

1519-20 (9th Cir.1995), *vacated on other grounds*, 520 U.S. 939, 117 S.Ct. 1871, 138 L.Ed.2d 135 (1997). Moreover, in the context of construing the term "public disclosure" in the Consumer Product Safety Act, 15 U.S.C. § 2055(b)(1), the Supreme Court has held that the term encompasses materials released in response to a FOIA request. *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 109, 100 S.Ct. 2051, 64 L.Ed.2d 766 (1980). Finally, this conclusion is consistent with our own prior discussions of what constitutes a "public disclosure" under the FCA. In *Doe*, we found that once innocent employees of a company being investigated for fraud were informed of the allegations, public disclosure of those allegations had occurred. 960 F.2d at 323. We rejected the contention that, in order for public disclosure to have taken place, the information must be more broadly disseminated. *Id.* *Doe* therefore undermines Kirk's argument that the information contained in the FOIA materials was not public because it had been disclosed only to the Kirks. Accordingly, we find that the information produced to Mrs. Kirk in response to her FOIA requests, once she had received it, was "publicly disclosed" within the meaning of 31 U.S.C. § 3730(e)(4)(B).

However, the question remains whether any or all of the FOIA materials qualify as an enumerated source under the statute. "Section 3730(e)(4)(A) furnishes an exclusive list of the ways in which a public disclosure must occur for the jurisdictional bar to apply." *Id.* Here, the potentially applicable categories are "administrative . . . report . . . or investigation." 31 U.S.C. § 3730(e)(4)(A).

Appendix A

Our sister Circuits have come to differing conclusions regarding whether materials produced by a government agency pursuant to a FOIA request are administrative reports or investigations within the meaning of the FCA's jurisdictional bar.

The Third Circuit, in *Mistick*, concluded that they are. Relying largely on dictionary definitions of the terms of the statute, the Third Circuit held that when a relator's claim was based on files released by the Department of Housing and Urban Development ("HUD") in response to a FOIA request, including letters submitted to HUD containing allegedly false claims, the FCA's jurisdictional bar applied. *Mistick*, 186 F.3d at 383-84. After finding that the word "administrative" refers "only to those administrative reports that originate with the federal government," *id.* at 383, the court reasoned,

> [a] "report" is defined as, among other things, "something that gives information" or a "notification," *Webster's Third New International Dictionary* 1925 (1971), and an "official or formal statement of facts or proceeding." *Black's Law Dictionary* 1300 (6th ed.1990). A response to a FOIA request falls within these definitions. Such a response provides information and notification regarding the results of the agency's search for the requested documents and constitutes an official and formal statement concerning those results.

Id. at 383-84. The court continued,

> [w]e also believe that this response occurred "in a[n] . . . administrative . . . investigation." 31 U.S.C. § 3730(e)(4)(A). For the reasons already explained, HUD's search for the documents sought under the FOIA and its decision to disclose them clearly satisfied our court's interpretation of the term "administrative," and we believe that these processes should be viewed as constituting an "investigation" within the meaning of 31 U.S.C. § 3730(e)(4)(A). Accepted definitions of the term "investigation" include "a detailed examination," *Webster's Third New International Dictionary* 1189 (1971), and the "making of a search." 1 *The Compact Edition of the Oxford English Dictionary* 457 (1971). When an agency receives a FOIA request, it is obligated to conduct a search that is reasonably calculated to uncover all relevant documents.

Id. at 384. Accordingly, the *Mistick* court found that jurisdiction was barred by the statute. *Id.* at 382-84. *Mistick*'s analysis has since been followed by the First and Fifth Circuits.[5] *Ondis*, 587 F.3d at 56-57; *Reagan*, 384 F.3d at 175-76.

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5. The Tenth Circuit has also found that a letter from the Department of the Interior Minerals Management Service disclosed pursuant to a FOIA request constituted an administrative report under § 3730(e)(4)(A), although the court's reasoning is not set forth at length because the issue does not appear to have been disputed by the parties. *United States ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038, 1049 (10th Cir.2004). *Grynberg* does not cite *Mistick*. *See id.*

Appendix A

The Ninth Circuit, in *United States ex rel. Haight v. Catholic Healthcare West*, 445 F.3d 1147 (9th Cir.2006), took a different approach. Rather than relying on the dictionary definition of the words "report" and "investigation," the *Haight* court looked at the words in the context of § 3730(e)(4)(A) as a whole. The court reasoned that

> a FOIA request is a mechanism for duplicating records that are in the possession of the federal government and that are not otherwise excludable from members of the public. In contrast, reports and investigations generally involve independent work product. "Report" denotes a document that includes an analysis of findings; "investigation" implies independent governmental leg-work. Moreover, the FCA's jurisdictional bar groups "report" and "investigation" with a series of other enumerated sources that each involve extensive governmental work product and involvement. Because responding to a FOIA request requires little more than duplication, labeling any response to a FOIA request a "report" or "investigation" would ignore the way in which each of the enumerated sources [in the statute] involves governmental work product.

Id. at 1153 (internal quotation marks and citation omitted).

Appendix A

The Ninth Circuit also reviewed the legislative history of the FCA's jurisdictional provisions: The original version of the Act, enacted in 1863, allowed *qui tam* suits with no limitations based on how the relator came to know of the false claim, even if the government was already in possession of the relevant information. *Id.* at 1154. In 1943, in *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 63 S.Ct. 379, 87 L.Ed. 443 (1943), the Supreme Court found that a *qui tam* suit was permitted even when the allegations in the complaint were copied directly from a publicly filed criminal indictment. *See Haight*, 445 F.3d at 1154. In response to *Marcus*, Congress enacted a strict jurisdictional provision prohibiting *qui tam* suits "based upon evidence or information in the possession of the United States, or any agency, officer or employee thereof, at the time" the case was brought. Pub.L. No. 78-213, 57 Stat. 608, 609 (1943) (superseded 1986); *see also Haight*, 445 F.3d at 1154. Under this provision, even if the relator had obtained the information through independent effort and then submitted it to the government, the fact that the government then possessed the information would bar a *qui tam* action. The high water mark of this restrictive approach was *United States ex rel. Wisconsin v. Dean*, 729 F.2d 1100 (7th Cir.1984), in which the Seventh Circuit found that the state of Wisconsin was barred from pursuing a *qui tam* action to recover the proceeds of a Medicaid fraud that the state had discovered through its own investigation when Wisconsin had previously, as required by federal law, submitted information concerning the fraud to the U.S. government. *See Haight*, 445 F.3d at 1154. In 1986,

Congress again took action, this time to relax the jurisdictional bar, and the current language was instituted. Pub.L. No. 99-562, 100 Stat. 3153, 3157 (1986). Summing up the lesson to be taken from this history, the *Haight* court stated, "the jurisdictional bar provisions must be analyzed in the context of these twin goals of rejecting suits which the government is capable of pursuing itself, while promoting those which the government is not equipped to bring on its own." 445 F.3d at 1154 (internal quotation marks omitted); *see also Doe*, 960 F.2d at 321-22 (reviewing the same legislative history and concluding that "[t]he 1986 amendments attempt to strike a balance between encouraging private citizens to expose fraud and avoiding parasitic actions by opportunists who attempt to capitalize on public information without seriously contributing to the disclosure of the fraud").

The Ninth Circuit concluded that construing the terms "report" and "investigation" to refer to work product that represents governmental analysis or legwork rather than the mechanistic production of documents that follows upon a FOIA request is in keeping with the goals of the FCA's jurisdictional provision, as demonstrated by this history:

> Congress sought to bar suits in which the government could already be expected to be on notice of the fraud. . . .
>
> [W]hen responding to a FOIA request, the government need not

> assimilate the information contained in the requested documents. The duplication of FOIA-requested documents does not require the degree of familiarity and cognizance that the drafting of a report or the conducting of an investigation would. Accordingly, prohibiting *qui tam* relators from basing their allegations on any information obtained in a FOIA response would damage the fraud-detection purpose of the FCA while failing to serve its twin goal of preventing opportunism.

Haight, 445 F.3d at 1154-55. The *Haight* court therefore held that the question whether a document obtained through a FOIA request qualifies as one of the enumerated sources under the FCA's jurisdictional bar should be answered by assessing the nature of the document itself. *Id.* at 1156.

> If the document obtained via FOIA request is a public disclosure of a "criminal, civil, or administrative hearing, . . . a congressional, administrative, or [General] Accounting Office report, hearing, audit, or investigation, or [is] from the news media," then the jurisdictional bar is applicable. If, as was the case here, the document obtained via FOIA does not *itself* qualify as an enumerated source, its

> disclosure in response to the FOIA request does not make it so.

Id.

After undertaking our own review of the statute and its legislative history, as well as considering the analyses undertaken by our sister Circuits, we agree with the Ninth Circuit that whether a document obtained through a FOIA request is an enumerated source within the meaning of § 3730(e)(4)(A) depends on the nature of the document itself. Our conclusion is compelled, first, by the language of the provision. The specific question we face is whether a document produced in response to a FOIA request is always an "administrative . . . report . . . or investigation." In order to ascertain the import of these potentially broad terms, however, we do not focus on them in isolation; rather, their "meaning[ ] [is] narrowed by the commonsense canon of *noscitur a sociis*-which counsels that a word is given more precise content by the neighboring words with which it is associated." *United States v. Williams*, 553 U.S. 285, 128 S.Ct. 1830, 1839, 170 L.Ed.2d 650 (2008). All of the other terms in the list of enumerated sources connote the synthesis of information in an investigatory context. "[C]riminal, civil, [and] administrative hearings," for instance, all entail a government inquiry into a given subject, here into an alleged case of fraud. Similarly, government "hearing[s and] audit[s]" are processes by which information is compiled with the concerted aim of deepening a government entity's knowledge of a given subject or, often, determining whether a party is in compliance with applicable law.

Given this company of "neighboring words," we find that it strains the natural meaning of the statute to construe the terms "report" and "investigation" as broadly as some of our sister Circuits have done, so that they include any and all materials produced in response to a FOIA request. In this context, the term "report" most readily bears a narrower meaning than simply "something that gives information." *Ondis*, 587 F.3d at 56 (citing *Webster's Third New Int'l Dict.* 1925 (2002)); *see also Mistick*, 186 F.3d at 383 (finding that a response to a FOIA request is a "report" because it "provides information and notification regarding the results of the agency's search"). Rather, it connotes the compilation or analysis of information with the aim of synthesizing that information in order to serve some end of the government, as in a "hearing" or "audit." It does not naturally extend to cover the mechanistic production of documents in response to a FOIA request made by a member of the public. Similarly, the term "investigation," in the context of the statute, must be construed more narrowly than simply a "detailed examination" or "search." *Mistick*, 186 F.3d at 384. Instead, an "investigation" here implies a more focused and sustained inquiry directed toward a government end-for example, uncovering possible noncompliance or assembling information relevant to a problem of particular concern to the government.[6]

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6. In applying the *noscitur a sociis* canon, we have taken guidance from the Supreme Court's decision in *Graham County Soil and Water Conservation District v. United States ex rel.*

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Appendix A

Those of our sister Circuits who have come to the opposite conclusion have emphasized that an agency responding to a FOIA request conducts a review of its records and compiles all responsive documents before providing them to the requester. *See Ondis*, 587 F.3d at 56; *Mistick*, 186 F.3d at 383-84. But what the agency does *not* do in such a case is synthesize the documents or their contents with the aim of itself gleaning any insight or information, as, in contrast, it necessarily

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Wilson, __ U.S. __, 130 S.Ct. 1396, 176 L.Ed.2d 225 (2010), in which the Court directly addressed the application of this canon to the FCA's jurisdictional bar. Our interpretation follows the Court's counsel that "*all* of the sources listed in § 3730(e)(4)(A) provide interpretive guidance," *id.* at 1404, not merely the immediate neighbors of the term. We also have not used the canon to inject into a word a meaning that would otherwise be wholly absent. *See generally id.* at 1401-05. Rather, we use it as a guide in sifting through the common understandings of "report" and "investigation" to discover their intended meaning within the FCA. *See Williams*, 128 S.Ct. at 1839 (holding that where terms "are susceptible of multiple and wide-ranging meanings . . . those meanings are narrowed by the commonsense canon of *noscitur a sociis*"); *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307, 81 S.Ct. 1579, 6 L.Ed.2d 859 (1961) ("The maxim *noscitur a sociis* . . . is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress."). We likewise have not used the canon to impose commonality on terms that "do not share any . . . core of meaning," *Graham County*, 130 S.Ct. at 1404 n. 7. To the contrary, the terms "hearing," "report," "audit," and "investigation" all refer to processes of uncovering and analyzing information or to the products of those processes. Our interpretation focuses on their shared "core of meaning."

would in conducting a "hearing" or "audit." FOIA is simply a mechanism for granting the public access to information in the possession of an agency.[7] *See FBI v. Abramson*, 456 U.S. 615, 641-42, 102 S.Ct. 2054, 72 L.Ed.2d 376 (1982) ("[T]he principal purpose of the FOIA was to establish a general philosophy of full agency disclosure, in order to permit access to official information long shielded unnecessarily from public view . . . ." (internal quotation marks and citation omitted)); *Mistick*, 186 F.3d at 393 (Becker, *C.J.*, dissenting) ("[FOIA] does not compel an agency to 'investigate' a request, in the sense that an agency of the federal government normally investigates such things as allegations of fraud, crimes, or other wrongdoing. Rather, the Act simply forces agencies to 'make [their] records promptly available,' upon request." (citing 5 U.S.C. § 552(a)(3)(A))).

Our reading of the statute is buttressed by the legislative history of § 3730(e)(4)(A). Although, as the Supreme Court recently noted, the legislative history does not indicate the drafters' reasons for adopting the specific language contained in the final version of the bill, *Graham County Soil and Water Conservation*

7. In this connection, we note that FOIA itself nowhere uses the term "report" to describe the end product generated by an agency in response to a request, nor does it use the term "investigation" to describe the process of searching for records. Instead, it describes the process as one of "mak[ing] . . . records promptly available" to a party who has requested them, 5 U.S.C. § 552(a)(3)(A), or "production of . . . agency records," *id.* § 552(a)(4)(B).

District v. United States ex rel. Wilson, __ U.S. __, 130 S.Ct. 1396, 1407-10, 176 L.Ed.2d 225 (2010), the history does make clear that the 1986 amendments to the FCA's jurisdictional provision were a reaction against the previous version of the statute, which had barred any *qui tam* action that was based on information in the possession of the government, *id.* at 1406; *see also Haight*, 445 F.3d at 1154-55; *United States ex rel. Findley v. FPC-Boron Employees' Club*, 105 F.3d 675, 684 (D.C.Cir.1997) ("When Congress amended the Act in 1986, . . . the focus of the jurisdictional bar [changed] from evidence of fraud inside the government's overcrowded file cabinets to fraud already exposed in the public domain."). Congress's avowed goal was, generally, to "encourage more private enforcement" of the FCA through expansion of its *qui tam* provisions, S.Rep. No. 99-345, at 23-24 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5266, 5288-89, and, more specifically, to "correct[ ] restrictive interpretations of the act's . . . *qui tam* jurisdiction," *id.* at 4, *as reprinted in* 1986 U.S.C.C.A.N. at 5269. As the D.C. Circuit noted in *Findley*, the legislators sought "to prod the government into action" by allowing *qui tam* suits when "evidence or information of fraud was buried somewhere in a government file." *Findley*, 105 F.3d at 684 n. 4.

What we find most problematic about an interpretation that construes FOIA materials as "administrative reports" or the product of an "administrative investigation" within the meaning of § 3730(e)(4)(A) is that it would essentially resurrect, in a significant subset of cases, the government possession

standard that Congress repudiated in 1986. As a practical matter, it is likely that in a substantial number of cases involving fraud against the government, some key piece of information-such as a contract, a record of orders placed, etc.—will be in the government's possession. Under the approach adopted in *Mistick*, the moment a motivated individual seeking to uncover fraud receives such a document through FOIA, it becomes a publicly disclosed "administrative report" or the product of an "administrative investigation," triggering the FCA's jurisdictional bar. Such an individual would then be barred from bringing an FCA claim when any of the pertinent information is possessed solely in the government's files, a result that is counterproductive to Congress's goal of "strik[ing] a balance between encouraging private citizens to expose fraud and avoiding parasitic actions by opportunists who attempt to capitalize on public information without seriously contributing to the disclosure of the fraud," *Doe*, 960 F.2d at 321.[8]

8. At oral argument, counsel for Schindler noted, in addressing whether a finding that FOIA materials are an enumerated source under the statute would reinstate the government possession standard, that not all information in the government's possession is subject to disclosure under FOIA. We see no reason of logic or policy, however, why the presence or absence of jurisdiction in a suit under the FCA should turn on the question of whether one of the exceptions to FOIA applies. *See* 5 U.S.C. § 552(b) (providing that FOIA does not apply to classified information, information relating to the internal personnel rules and practices of an agency, information

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Certainly, in some cases a *qui tam* plaintiff will herself possess all of the relevant information, and in such cases the mere fact that some or all of the information was also possessed by the government would not be a bar to a suit. Similarly, in some cases a *qui tam* plaintiff will qualify as an "original source" under 31 U.S.C. § 3730(e)(4)(B), in which case the jurisdictional bar's exception applies and the status of FOIA documents under the provision becomes irrelevant, *id.* § 3730(e)(4)(A). *See Graham County*, 130 S.Ct. at 1410-11 (noting that even under the Court's broader reading of the FCA's jurisdictional bar the rights of "original source" *qui tam* plaintiffs are preserved). But the facts of this case belie the assertion that individuals who are not original sources and who obtain information through FOIA requests will generally not be persons with firsthand knowledge of fraud but rather will be opportunistic litigators. *See Ondis*, 587 F.3d at 56. The facts also illustrate how an overbroad reading of the jurisdictional bar would prevent an individual with independent but partial knowledge of a possible fraud

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specifically exempted from disclosure by statute, trade secrets, inter or intra-agency memoranda, personnel and medical files, certain law enforcement records, certain reports of financial regulatory agencies, or geological and geophysical information concerning wells). Moreover, it makes little sense to find that a party is able to bring a suit because the information he attempted to obtain from the government was not subject to disclosure under FOIA when that party will, in such a case, necessarily not have in her possession all of the information she requires to bring her lawsuit.

would be barred from bringing a lawsuit that is neither parasitic nor frivolous. Here, Kirk became suspicious, based on his own experience as a Vietnam veteran employed by Schindler, that Schindler was not in compliance with VEVRAA. To confirm this suspicion, however, he needed copies of Schindler's VETS-100 reports, and the readiest lawful means through which he could obtain them was a FOIA request. Once he had received copies of the existing reports, and learned that no reports had been filed for certain years, he was able to put the pieces of his lawsuit together. The assumption that such a case will be a rare exception is questionable.

Finally, we note that our interpretation of § 3730(e)(4)(A) accords with that urged by the government as amicus curiae. The government states that the "more limited" jurisdictional bar enacted in 1986 is "predicated upon the public disclosure of allegations in specific categories demonstrating that the government is either actively investigating the alleged fraud or that there is sufficient public awareness of the allegations to pressure the government to start an investigation." Brief for *Amicus Curiae* the United States of America in Support of Appellant at 24-25. In other words, the government advocates an interpretation of the statute under which citizen relators will be able to bring suit in those instances in which the government itself is not pursuing, or considering the pursuit of, an investigation.[9] *See Findley*, 105 F.3d at

9. We note that the FCA's provisions specifying that *qui tam* suits be filed under seal and that the government be allowed

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688 (finding that a *qui tam* action was barred where the complaint was based on publicly disclosed information that "already enable[d] the government to adequately investigate the case and to make a decision whether to prosecute"); *Springfield Terminal Ry.*, 14 F.3d at 655 (finding that the FCA's jurisdictional bar is best understood as applying when the government is already, or can reasonably be expected to be, "on the trail" of fraud); *see also United States ex rel. Fine v. Sandia Corp.*, 70 F.3d 568, 571 (10th Cir.1995) (quoting *Springfield Terminal Railway*). While the "public disclosure" standard that Congress enacted is distinct from an actual notice standard, *see Graham County*, 130 S.Ct. at 1410 (noting that "[t]he statutory touchstone . . . is whether the allegations of fraud have been 'publicly disclosed,' not whether they have landed on the desk of a DOJ lawyer" (brackets and citation omitted)), we note

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the opportunity to intervene and pursue the action itself, as well as to move for an extension of time during which the complaint remains under seal, to move to dismiss the action, or to settle the action, 31 U.S.C. § 3730(b)-(c), protect the government's ability to maintain control of cases in which it is pursuing an investigation or otherwise wishes to assert its own interests against those of the *qui tam* relator. In one sense the jurisdictional bar, as we interpret it, serves a similar purpose, in that it prevents *qui tam* actions where the government has initiated an investigation of its own. However, the provisions also address different situations, as the intervention provisions allow the government a measure of control over a *qui tam* suit based on allegations that have not been made public in any way, while the jurisdictional bar saves the government the trouble of intervening in a parasitic case based on public allegations.

that the forms of public disclosure that trigger the jurisdictional bar are all forms that can reasonably be expected to indicate that some branch of government has turned its attention to the potential fraud in question, such as a hearing, audit, report, or investigation. Under this reading, *qui tam* relators would not duplicate government efforts to crack down on fraud but would bring their own resources to bear where the government was not in a position to act. This division of labor will maximize efficient enforcement of the FCA in the manner envisioned by the authors of the 1986 amendments. *See* S.Rep. No. 99-345, at 2, *as reprinted in* 1986 U.S.C.C.A.N. at 5267 ("In the face of sophisticated and widespread fraud, the Committee believes only a coordinated effort of both the Government and the citizenry will decrease this wave of defrauding public funds.").

For all of the foregoing reasons, we hold that a document obtained in response to a FOIA request qualifies as an enumerated source under 31 U.S.C. § 3730(e)(4)(A) only when the document itself is a "congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation," reflecting the government's efforts to compile or synthesize information to serve its own investigative or analytic ends. The mere fact that a government agency has assembled and duplicated records, or noted the absence of records, in responding to a FOIA request does not itself render the material produced an "administrative . . . report . . . or investigation" within the meaning of § 3730(e)(4)(A).

In this case, the materials produced to the Kirks by the DOL in response to Mrs. Kirk's FOIA requests consisted only of Schindler's VETS-100 filings as well as letters indicating that for certain years no responsive records had been found, neither of which constitutes an "administrative . . . report . . . or investigation" under the statute. Accordingly, the materials are not enumerated sources, and the FCA's jurisdictional bar does not apply.[10]

10. Because we find that the FOIA materials are not enumerated sources, the parties' dispute over whether the "allegations or transactions" requirement of § 3730(e)(4)(A) is satisfied is moot. Similarly, we need not address the question of whether Kirk qualifies as an "original source" of the information within the meaning of § 3730(e)(4)(A).

> For the first time on appeal, Schindler raises the additional argument that the information on which Kirk's claims are based was publicly disclosed because the DOL is required by law to "make available in a database a list of the contractors that have complied with [VEVRAA's requirement that VETS-100 reports be filed]," 31 U.S.C. § 1354(b). However, "[i]t is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal." *Allianz Ins. Co. v. Lerner*, 416 F.3d 109, 114 (2d Cir.2005) (quoting *Greene v. United States*, 13 F.3d 577, 586 (2d Cir.1994)). While we have discretion to consider waived arguments in order to avoid a manifest injustice or where a question of law is at issue and there is no need for additional factfinding, *id.*, this is not an instance in which it would be appropriate
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> (Cont'd)

II. The Validity of Kirk's Claims Under the FCA

We next address whether Kirk stated valid claims under the FCA when he alleged that (1) Schindler did not file, or did not timely file, any VETS-100 reports for the years 1998 through 2003, and (2) Schindler filed false VETS-100 reports for 2002,[11] 2004, 2005, and 2006.[12] We review *de novo* a district court's decision to dismiss a plaintiff's claims for failure to state a claim. *Gregory v. Daly*, 243 F.3d 687, 691 (2d Cir.2001). In doing so, we accept as true all factual allegations contained in the complaint and draw all inferences in favor of the plaintiff. *Id.*

(Cont'd)

> to exercise that discretion. Kirk contends that the database is not available to the public but rather is password-protected and available only to certain agency officials. Given that there is nothing in the record indicating what the nature of this database is or to whom it is available, we are not in a position to evaluate Schindler's argument.

11. As noted above, Kirk's complaint alleges that Schindler failed to file a VETS-100 report for 2002 by the applicable deadline, and it also alleges that Schindler's VETS-100 report was false. We assume for the purposes of this analysis that both allegations are potentially true, and simply address the legal validity of each theory of liability.

12. On appeal, Kirk does not pursue his claims based on Schindler's alleged failure to implement an affirmative action plan for veterans and to offer veterans an opportunity to self-identify.

Appendix A

As an initial matter, the parties each make arguments that we either should not or need not reach this issue. Schindler argues, for the first time on appeal, that the provisions of VEVRAA on which Kirk relies are not applicable to its contracts with the government because the applicable regulations exempt "contracts for commercial items" from the requirement of filing VETS-100 reports. *See* 48 C.F.R. § 22.1302(b) (exempting "contracts for commercial items" from filing VETS-100 reports and other VEVRAA filing requirements); 66 Fed.Reg. 53,487, 53,487 (Oct. 22, 2001) (noting that 31 U.S.C. § 1354, which prohibits the government from entering into contracts with contractors who have not filed their VETS-100 reports, does not apply to "acquisitions of commercial items"). Because this argument was not raised before the district court, however, it is waived. *Allianz Ins. Co. v. Lerner*, 416 F.3d 109, 114 (2d Cir.2005). We further observe that the question of whether Schindler's contracts to install and maintain elevators and escalators are properly considered "contracts for commercial items" rather than contracts for construction, which are not exempted from the VETS-100 filing requirements, is fact-specific and therefore does not present an appropriate occasion for us to exercise our discretion to consider an argument that has been waived. *See id.*

Kirk, for his part, argues that it was improper for the district court to consider the substantive validity of his FCA claims because Schindler did not move to dismiss these claims under Fed.R.Civ.P. 12(b)(6) and asserted instead that the action should be dismissed on

jurisdictional and Rule 9(b) grounds. Kirk characterizes the district court's dismissal of certain of his claims as a *sua sponte* dismissal for failure to state a claim on which relief can be granted, and asks that, if we do not reinstate his dismissed claims on substantive grounds, we vacate this aspect of the district court's decision in order to afford him an opportunity to be heard. It is true that "[p]roviding a plaintiff with notice and an opportunity to be heard is often necessary to establish the fairness and reliability of a dismissal," *Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir.2007), and failure to afford plaintiff an opportunity to be heard can be grounds for reversal, *see Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 760 F.2d 1347, 1365 (2d Cir.1985). Because, for the reasons explained below, we reverse the district court's determination that certain of Kirk's claims were substantively invalid and reinstate those claims, however, we need not address this alternative argument. We therefore draw no conclusions as to whether the district court's dismissal is properly characterized as *sua sponte* or whether it is in fact the case that Kirk did not receive a meaningful opportunity to be heard below.

Turning, then, to the validity of Kirk's claims, we first review the elements of liability under the FCA. At the time Kirk filed his claim, the potentially applicable provisions of the FCA were 31 U.S.C. § 3729(a)(1)[13]

13. This provision imposed liability on any person who "knowingly presents, or causes to be presented, to an officer or

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and (a)(2).[14] In 2009, Congress passed the Fraud Enforcement and Recovery Act ("FERA"), Pub.L. No. 111-21, 123 Stat.. 1617 (2009), which amended and renumbered these provisions as §§ 3729(a)(1)(A) and (a)(1)(B), respectively, *see* FERA § 4(a), 123 Stat. at 1621. The amendment to § 3729(a)(2), but not the amendment to § 3729(a)(1), was made retroactive to June 7, 2008, applicable to "all claims under the False Claims Act . . . that [were] pending on or after that date," FERA § 4(f), 123 Stat. at 1625. Because Kirk's claim was filed in March 2005, and was pending as of June 7, 2008, the potentially applicable provisions in this case are former § 3729(a)(1), establishing liability for "knowingly present[ing], or caus[ing] to be presented, to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval," and current § 3729(a)(1)(B), establishing liability for "knowingly mak[ing], us [ing], or caus[ing] to be made or used, a false record or statement material to a false or fraudulent claim," *see* FERA § 4(a), 123 Stat. at 1621.

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employee of the United States Government . . . a false or fraudulent claim for payment or approval." 31 U.S.C. § 3729(a)(1) (2006), *amended by* Fraud Enforcement and Recovery Act of 2009, Pub.L. No. 111-21, 123 Stat.. 1617 (2009).

14. This provision imposed liability on any person who "knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government." 31 U.S.C. § 3729(a)(2) (2006), *amended by* Fraud Enforcement and Recovery Act of 2009, Pub.L. No. 111-21, 123 Stat.. 1617 (2009).

We first address Kirk's claims based on Schindler's alleged failure to file VETS-100 reports for the years 1998 through 2003. We will begin our analysis, as the district court did, with an assessment of whether liability arises under former § 3729(a)(1), employing the analysis set forth in *Mikes v. Straus*, 274 F.3d 687 (2d Cir.2001). As we construed former § 3729(a)(1) in *Mikes*, in order to establish liability a plaintiff must show "that defendants (1) made a claim, (2) to the United States government, (3) that is false or fraudulent, (4) knowing of its falsity, and (5) seeking payment from the federal treasury." *Id.* at 695. The central dispute with regard to Kirk's claims based on Schindler's failure to file VETS-100 reports is whether its subsequent claims for payment were "false" within the meaning of the statute, as construed by *Mikes*.[15] In some cases, a claim made to the government is "factually false," meaning that a

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15. Schindler makes much of the materiality requirement contained in current § 3729(a)(1)(B). As we have explained, however, former § 3729(a)(1) is equally applicable to Kirk's claims. While, prior to the adoption of the new provision, the First, Fourth, Fifth, Sixth, Eighth, and Ninth Circuits had all held that the FCA includes a materiality requirement, *see United States v. Bourseau*, 531 F.3d 1159, 1170-71 (9th Cir.2008) (listing Circuits that have adopted a materiality requirement and similarly adopting one), this Court has never so held, *see Mikes*, 274 F.3d at 697 (noting that some Circuits have adopted a materiality requirement but refraining from deciding whether "a false statement or claim must be material to the government's funding decision"). Rather, *Mikes* focused on the question of when a claim for payment may be construed as "false" under former § 3729(a)(1). *See id.* at 696. Its analysis remains applicable to claims under that provision.

contractor supplies "an incorrect description of goods or services provided or a request for reimbursement for goods or services never provided," *id.* at 697-in other words, the contractor bills for something it did not provide. In such a case, application of the FCA is fairly straightforward. More difficult to assess, however, are cases in which a contractor falsely represents that it is in compliance with a particular federal statute or regulation or an applicable contractual term. *See id.* at 696. Because "[t]he language of [the FCA] plainly links the wrongful activity to the government's decision to pay," *id.*, the statute "does not encompass those instances of regulatory noncompliance that are irrelevant to the government's disbursement decisions," *id.* at 697. In other words, not every instance in which a false representation of compliance with a regulatory regime is made will lead to liability.

Mikes extensively addressed the "legally false certification theory" of liability under the FCA, as distinct from a "factually false" claim. *Id.* at 696-97. Legally false certification occurs "where a party certifies compliance with a statute or regulation as a condition to governmental payment." *Id.* at 697. In some cases, there will be an "express false certification," where "a claim . . . falsely certifies compliance with a particular statute, regulation or contractual term, where compliance is a prerequisite to payment." *Id.* at 698. In other cases, however, where no express certification is required, there may still be liability under an "implied certification theory":

> implied false certification is appropriately applied . . . when the underlying statute or regulation upon which the plaintiff relies *expressly* states the provider must comply in order to be paid. . . . Liability under the Act may properly be found therefore when a defendant submits a claim for [payment] while knowing . . . that payment expressly is precluded because of some noncompliance by the defendant.

Id. at 700. In other words, the contractor itself need not certify compliance for a legally false certification to have occurred, although when it does so there will be an *express* false certification. An *implied* false certification takes place where a statute expressly conditions payment on compliance with a given statute or regulation, and the contractor, while failing to comply with the statute or regulation (and while knowing that compliance is required), submits a claim for payment.

Title 31, Section 1354(a)(1) of the United States Code provides that "no agency may obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract [covered by VEVRAA] with a contractor from which a [VETS-100] report was required . . . with respect to the preceding fiscal year if such contractor did not submit such report.." In addition, 48 C.F.R. § 52.222-38 provides that "[b]y submission of its offer, the offeror represents that, if it is subject to the reporting requirements of [VEVRAA], it has submitted the most recent VETS-100 Report required

by that [Act]." This regulation was adopted in October 2001 and became effective December 21, 2001. *See* 66 Fed.Reg. 53,487 (Oct. 22, 2001). The district court found that Kirk stated a valid claim under the FCA when he alleged that Schindler submitted bids covered by 48 C.F.R. § 52.222-38 without having submitted a VETS-100 report for the preceding fiscal year and then won a contract. We agree. The effect of the regulation is that any contractor covered by VEVRAA certifies that it has submitted its most recent VETS-100 report when it makes a bid for government business. If it has not submitted the report, such a certification would be false. In the terms of the *Mikes* analysis, then, such a contractor would have made an express false certification (albeit by operation of the regulation rather than by making the certification directly).

The district court also, however, dismissed those of Kirk's claims based on contracts awarded before the regulation's effective date, implicitly holding that liability cannot be predicated on 31 U.S.C. § 1354(a) alone. We respectfully disagree with this aspect of the district court's holding. As *Mikes* explained, implied false certification takes place "when the underlying statute or regulation upon which the plaintiff relies *expressly* states the provider must comply in order to be paid" and the defendant, while not in compliance, submits a claim for payment. 274 F3d at 700. Our discussion, in *Mikes*, of a provision of the Medicare statute offers a useful illustration:

Appendix A

> Section 1395y(a)(1)(A) of the Medicare statute states that "no payment may be made under the Medicare statute for any expenses incurred for items or services which . . . are not *reasonable and necessary* for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." 42 U.S.C. § 1395y(a)(1)(A) (emphasis added). Because this section contains an express condition of payment-that is, "no payment may be made"-it explicitly links each Medicare *payment* to the requirement that the particular item or service be "reasonable and necessary." . . . Since § 1395y(a)(1)(A) *expressly* prohibits payment if a provider fails to comply with its terms, defendants' submission of the claim forms implicitly certifies compliance with its provision.

Id. at 700-01 (brackets omitted). Similarly, 31 U.S.C. § 1354(a)(1) provides that "no agency may obligate or expend funds" to enter a contract covered by VEVRAA when the contractor has not submitted the requisite VETS-100 report. Because the statute expressly states that the contractor must have submitted the report in order to be paid, a contractor that requests payment under such a contract "implicitly certifies compliance" with the VETS-100 reporting requirement. Kirk therefore states a valid claim under the FCA when he alleges that Schindler submitted bids and won contracts without having filed the requisite report, even before 48 C.F.R. § 52.222-38 became effective.

Next, we address the validity of Kirk's claims based on Schindler's filing of allegedly false VETS-100 reports. Here, the district court, relying on former §§ 3729(a)(1) and (2) as construed by *Mikes*, found that there could be no liability for filing allegedly false VETS-100 reports because none of the applicable statutes or regulations makes filing an *accurate* report a precondition to payment or provides that a contractor, by submitting a bid or a request for payment, certifies the *accuracy*, as opposed to the submission, of its reports. We need not determine whether this analysis is correct, however, because we find that Kirk states a valid claim under the new § 3729(a)(1)(B).[16]

The new provision establishes liability when a party "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim." 31 U.S.C. § 3729(a)(1)(B). Accepting as true all of the factual allegations set forth in the complaint and drawing all inferences in the light most favorable to plaintiff, *see Gregory* 243 F.3d at 691, in 2002, 2004, 2005, and 2006 Schindler filed false VETS-100 reports, necessarily knowing that they were false because Schindler in fact had no mechanism in place to

16. We note that amicus curiae the United States takes the position that "the plain language of the FCA establishes that, where a contractor knowingly submits a false report to the government in order to obtain contracts (and payments on those contracts), no statute or regulation has to separately require that the report be accurate" for liability to attach. Brief for *Amicus Curiae* the United States of America in Support of Appellant at 29.

identify covered veterans. It did so in order to procure contracts or obtain payment under existing contracts, as it could do neither without filing the reports. *See* 31 U.S.C. § 1354(a)(1); 48 C.F.R. § 52.222-38. Accordingly, it knowingly used a false record in order to obtain payment from the government. *See* S.Rep. No. 99-345 at 9, *as reprinted in* 1986 U.S.C.C.A.N. at 5274 ("[A] false claim may take many forms, [including] a claim for goods or services . . . provided in violation of contract terms, specification, statute, or regulation. . . . [C]laims may be false even though the services are provided as claimed if, for example, the claimant is ineligible to participate in the program.")

Schindler argues that the materiality requirement of § 3729(a)(1)(B) is not met here. It notes that the government does not require, before entering into a contract or making payment under an existing contract, that some threshold number of Vietnam veterans be employed by any given contractor. Because the government's funding decisions are not predicated on the content of the reports, Schindler reasons, the allegedly false statements in the reports were not "material" as defined by § 3729(b)(4)-*i.e.*, "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." Schindler maintains that it does not take the position that the government is entirely indifferent to the accuracy of VETS-100 reports; rather, Congress simply did not contemplate using the FCA to ensure the accuracy of the reports. Instead, according to

Schindler, their accuracy is best monitored through existing administrative mechanisms.[17]

We are not persuaded by Schindler's arguments. While it is clear that the statute imposes a materiality requirement, we find that that requirement is met under the circumstances alleged in the complaint. Kirk does not merely allege that Schindler filed inaccurate reports, he alleges that Schindler failed to take any steps whatsoever to monitor the number of covered veterans in its workforce and instead fabricated the numbers it supplied in its VETS-100 reports, essentially plucking them out of thin air.[18] We need not now define the precise

17. Presumably Schindler has in mind such measures as oversight by the OFCCP. *See* 41 C.F.R. § 60-250.60 (providing that the OFCCP conduct compliance evaluations to determine whether contractors are complying with their obligations under VEVRAA, including their obligation to file VETS-100 reports).

18. Indeed, reports prepared in the manner alleged by Kirk are arguably not VETS-100 reports at all within the definition set forth in VEVRAA. VEVRAA requires that contractors submit reports detailing

> (A) the number of employees in the workforce of such contractor, by job category and hiring location, and the number of such employees, by job category and hiring location, who are qualified covered veterans;
>
> (B) the total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are qualified covered veterans; and

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contours of the materiality requirement in order to hold that in such a case, the VETS-100 reports constitute "false . . . statement [s] material to a false . . . claim." 31 U.S.C. § 3729(a)(1)(B). The reporting requirements of VEVRAA are sufficiently important to Congress that it made fulfillment of them a precondition to payment. *See id.* § 1354(a)(1). Schindler allegedly submitted VETS-100 reports that gave the impression that it was complying with these requirements while in fact it was entirely disregarding them. Such a false statement would certainly have a tendency to "influence, or be capable of influencing, the payment or receipt of money or property."[19] *Id.* § 3729(b)(4).[20] *Cf. United States ex rel.*

(Cont'd)

> (C) the maximum number and the minimum number of employees of such contractor during the period covered by the report.

38 U.S.C. § 4212(d)(1). In turn, 31 U.S.C. § 1354(a) provides that no payment can be made to a contractor "from which a report was required under section 4212(d) of [title 38] with respect to the preceding fiscal year if such contractor did not submit such report." A contractor that has submitted a report containing entirely fabricated numbers has arguably not submitted "such report" within the meaning of 31 U.S.C. § 1354(a).

19. A mere misreporting of the relevant figures from a company that had taken some imperfect measures to ascertain the number of veterans in its workforce, on the other hand, might not fulfill the materiality requirement of § 3729(a)(1)(B).

20. Kirk further asks us to decide in his favor the two issues that were not reached by the district court but that Schindler

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Longhi v. Lithium Power Technologies, Inc., 575 F.3d 458, 470 (5th Cir.2009) (construing the materiality requirement, as defined in § 3739(b)(4), as "requir[ing] only that the false or fraudulent statements either (1) make the government prone to a particular impression, thereby producing some sort of effect, or (2) have the ability to [a]ffect the government's actions, even if this is a result of indirect or intangible actions on the part of the Defendants"). Kirk's FCA claims based on Schindler's filing of allegedly false reports are thus valid.

CONCLUSION

We have considered the other arguments made by Schindler and find them to be without merit. We hold that whether documents produced in response to a FOIA request are enumerated sources under 31 U.S.C. § 3730(e)(4)(A) is to be determined by assessing the nature of the documents themselves; they are not "administrative . . . report[s] . . . or investigation[s]" simply by virtue of having been gathered by an agency

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raised in its motion to dismiss: whether he pleaded his claims with sufficient particularity under Fed.R.Civ.P. 9(b), and whether the district court should dismiss the case under the doctrine of "primary jurisdiction." However, "[i]n general, we refrain from analyzing issues not decided below." *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 90 (2d Cir.2004). Although we have discretion to reach such issues where the circumstances favor so doing, *id.*, we do not find that such circumstances exist here.

responding to a FOIA request. We further hold that Kirk stated valid claims under the FCA when he asserted (1) that Schindler had failed to file VETS-100 reports in certain years, and (2) that Schindler had filed false VETS-100 reports in certain years because it had filed reports that purported to detail the number of covered veterans in its workforce while in fact the company took no measures to identify such veterans. We therefore **VACATE** the judgment of the district court and **REMAND** the case for further proceedings consistent with this opinion.

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK DATED MARCH 30, 2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 05 Civ. 2917 (SHS)

UNITED STATES OF AMERICA *ex rel.*
DANIEL KIRK,

Plaintiff,

v.

SCHINDLER ELEVATOR CORPORATION,

Defendant.

March 30, 2009

OPINION AND ORDER

SIDNEY H. STEIN, District Judge.

Daniel Kirk ("Kirk" or "relator") brings this action on behalf of the United States under the *qui tam* provisions of the False Claims Act (the "FCA"), 31 U.S.C. §§ 3729-33, against defendant Schindler Elevator Corporation. Schindler is a party to numerous contracts with the federal government for the manufacture, installation, and maintenance of elevators and escalators

in government buildings. As a government contractor, Schindler is subject to the Vietnam Era Veterans Readjustment Assistance Act ("VEVRAA"), 38 U.S.C. § 4212. VEVRAA and its implementing regulations require government contractors such as Schindler to establish affirmative action programs for covered veterans, invite their employees to identify themselves as covered veterans, and file annual reports—known as "VETS-100" reports—with the United States Department of Labor detailing the number of covered veterans they employ. 38 U.S.C. § 4212; 41 C.F.R. § 61-250.10; 48 C.F.R. §§ 52.222-35 to -38. According to Kirk, Schindler has failed to comply with these requirements for a number of years.

Kirk alleges that, despite its noncompliance with VEVRAA, Schindler nevertheless submitted to agencies of the United States hundreds of requests for payment under its government contracts, each of which was a "false or fraudulent claim" rendering Schindler liable to the United States for a civil penalty of $5,500 to $11,000 as well as three times any damages sustained by the government. 31 U.S.C. § 3729(a)(1)-(2); 28 C.F.R. § 85.3(a)(9).[1] Kirk seeks to share in the government's recovery pursuant to 31 U.S.C. § 3730(d)(2), which provides that a *qui tam* relator who brings a successful

1. The civil penalties authorized by statute were slightly lower for false claims presented to the government between 1986 and September 29, 1999. They were set at not less than $5,000 and not more than $10,000. *See* False Claims Amendments Act of 1986 § 2, Pub.L. 99-562, 100 Stat 3153 (codified at 31 U.S.C § 3729(a)); 28 C.F.R. § 85.3.

suit without government intervention is entitled to a "reasonable" portion of not less than twenty-five and not greater than thirty percent of the government's proceeds.

Schindler now moves to dismiss the complaint, contending, first, that most of Kirk's allegations fail to state a claim under the FCA, and second, that this Court lacks subject-matter jurisdiction over the remaining allegations. In particular, Schindler argues that because relator's properly stated FCA claims stem from information obtained through responses to a series of Freedom of Information Act ("FOIA") requests submitted by him[2] to the U.S. Department of Labor ("DOL"), the action is "barred" by 31 U.S.C. § 3730(e)(4)(A), which strips federal courts of jurisdiction over *qui tam* actions "based upon the public disclosure of allegations and transactions in a [n] . . . administrative . . . report, hearing, audit, or investigation unless the . . . person bringing the action is an original source of the information." 31 U.S.C. § 3730(e)(4)(A).[3]

2. As discussed below, each of the FOIA requests was actually submitted by relator's wife, Linda Kirk. It is undisputed that the requests were submitted on relator's behalf, and accordingly, on occasion, for the purposes of brevity and clarity, the Court refers to the requests as submitted by relator.

3. Schindler also contends dismissal is appropriate because, first, relator has failed to plead fraud with the specificity required by Fed.R.Civ.P. 9(b), and second, pursuant to the doctrine of "primary jurisdiction," the Court should defer to an ongoing administrative investigation of Schindler's claims. However, neither contention is necessary to resolve defendant's motion, and accordingly, the Court does not address either.

Appendix B

Kirk contends that all of his allegations state FCA claims and that the jurisdictional bar does not apply to any of them for at least four reasons. Kirk claims, first, that the FOIA requests did not "publicly disclose" the information; second, that the DOL's responses to those requests were not "administrative reports" or "investigations" within the meaning of the statute; third, that the FOIA responses did not reveal the fraudulent "allegations or transactions" underlying his claims; and finally, that his action is not "based upon" the information obtained through his FOIA requests since Kirk, as a former Schindler employee, had independent knowledge of the alleged false claims.

The Court finds, first, that most of Kirk's allegations fail to state a claim upon which relief can be granted pursuant to the FCA, and second, that those of Kirk's allegations that do properly state FCA claims are barred by section 3730(e)(4)(A) as "publicly disclosed." Accordingly, defendant's motion to dismiss the amended complaint is granted.

I. BACKGROUND

Unless otherwise noted, the following facts are taken from the amended complaint and are presumed to be true:

A. *The Parties*

Schindler Elevator Corporation manufactures, installs, and services elevators and escalators and has offices throughout the United States. (Am. Compl. ¶¶2,

12-13.) In 1989, Schindler acquired Millar Elevator Industries, Inc., and the two companies merged in 2002. (*Id.* ¶ 12.)

Relator Daniel Kirk, a veteran of the United States Army who served on active duty during the Vietnam War, has worked in the elevator industry since 1968. (*Id.* ¶¶ 19, 25.) From 1978 until 2003, Kirk was employed by Millar and Schindler (collectively, "Schindler") in various supervisory, managerial, and executive capacities. (*Id.* ¶¶ 11, 19-21, 28.) In August 2003, Kirk resigned from Schindler as a result of what he characterizes as Schindler's attempts to "force[ ] [him] out of the company." (*Id.* ¶ 24.) Since then, Kirk has been an active litigant against his former employer, commencing four separate legal or administrative proceedings against Schindler, all alleging claims stemming from his employment with and separation from the company. (Aff. of Daniel E. Kirk, Jr. dated Sept. 27, 2007 ("Kirk Aff.") ¶¶ 12-24); (Def. Mem. of Law in Supp. of Summ. J. at 3-4.)

B. *VEVRAA and Schindler's Alleged Noncompliance*

All federal procurement contracts for non-personal services including construction that meet or exceed certain monetary thresholds are subject to VEVRAA. 38 U.S.C. § 4212(a)(1). That Act and its various implementing regulations set forth a series of requirements for all contracts subject to its provisions, three of which are relevant to this litigation: First, each

contract subject to VEVRAA must "contain a provision requiring that the [contractor] take affirmative action to employ and advance in employment [certain covered] veterans." 38 U.S.C. § 4212(a)(1). Second, every such contract must include language requiring the contractor to "invite all . . . eligible veterans who wish to benefit under the affirmative action program . . . to identify themselves to the [c]ontractor." 48 C.F.R. §§ 22.1310(b), 52.222-37(e). Third, to satisfy VEVRAA's requirement that all covered contractors "report, at least annually, to the Secretary of Labor" on such issues as "the number of such employees, by job category and hiring location, who are qualified covered veterans," 38 U.S.C. § 4212(d), VEVRAA-covered contracts must contain a clause providing that the "[c]ontractor shall submit VETS-100 Report[s] . . . no later than September 30 of each year." 48 C.F.R. §§ 22.1310(b), 52.222-37(c).

With regard to the third requirement, Congress passed the Veterans Employment Opportunities Act in 1998, which supplemented VEVRAA by providing that "no agency may obligate or expend funds . . . to enter into a contract [covered by VEVRAA] with a contractor from which a [VETS-100] report was required . . . with respect to the previous fiscal year if such contractor did not submit such report." 31 U.S.C. § 1354(a). To facilitate compliance, an implementing rule provides that "by submission of its offer, the offeror represents that, if it is subject to the reporting requirements [of VEVRAA] . . . it has submitted the most recent VETS-100 Report required of that [act]." 48 C.F.R. § 52.222-38.

Appendix B

During the period covered by the complaint, Schindler entered into hundreds of contracts with agencies of the federal government that were subject to VEVRAA and its various requirements. (Am. Compl. ¶¶ 3, 13, 20, 44(a), 56, 81-87.) While Kirk does not have access to any of the actual contracts or to a comprehensive list of all of Schindler's government contracts (*id.* ¶ 81), he submits, based on the requirements imposed by VEVRAA, that each contract must have contained provisions requiring Schindler to develop affirmative actions for veterans, to allow veterans to self-identify, and to submit annual VETS-100 Reports. (*Id.* ¶¶ 81-87.)

Kirk proceeds to allege that Schindler failed to comply with all three requirements. First, Kirk alleges generally that Schindler has no affirmative action program for veterans. (*Id.* ¶ 29.) In support of the claim, Kirk asserts that while he was employed by Schindler as a supervisor and manager with responsibility for employment decisions within his department, he was never informed that Schindler had any policy to take affirmative action with respect to veteran employees. (*Id.* ¶¶ 28, 57.) Further, Kirk claims that Schindler's employee manual makes no mention of any affirmative action program for veterans. (*Id.* ¶ 28.)

Second, Kirk alleges generally that Schindler failed to invite any of its employees to self-identify as veterans (*id.* ¶¶ 27, 58-59) and asserts in support of the claim that during his tenure as a Schindler employee he was never asked to self-identify as a veteran. (*Id.* ¶ 26.)

Third, Kirk alleges that during several years covered by the complaint Schindler failed to comply with VEVRAA's reporting requirements, by either not filing the required VETS-100 reports with the DOL or by filing reports containing false or partial information. (*Id.* ¶¶ 4, 60.)

In support of that third claim, Kirk relies on the DOL's responses to a series of FOIA requests submitted by his wife, Linda Kirk, seeking past VETS-100s filed by defendant with the DOL. Relator's FOIA requests, and the DOL's responses, were as follows:

First FOIA Request: On November 4, 2004, Mrs. Kirk wrote to the DOL seeking VETS-100 reports filed by defendant in the years 2002, 2003, and 2004. (Letter from Linda Kirk to Robert Wilson dated Nov. 5, 2004, Ex. G to Kirk Aff.)[4] On February 11, 2005, Robert Wilson, the Chief of the Investigation and Compliance Division for DOL's Office of Veteran's Employment and Training

4. While each of the Kirks' FOIA requests was referenced in the complaint, the actual requests-and the DOL's responses-were not provided with the complaint, but were instead attached to relator's affidavit submitted in conjunction with this motion. Because the requests and the DOL's responses pertain primarily to defendant's motion to dismiss for lack of jurisdiction, the court can and does look beyond the pleadings in order to satisfy itself that it has the authority to hear the action. *See Filetech S.A. v. Fr. Telecom S.A.*, 157 F.3d 922, 932 (2d Cir.1998) (in resolving challenges to subject-matter jurisdiction, court can look beyond pleadings to satisfy itself that it has the authority to hear the case).

responded, providing the report for 2004 and indicating that "no records . . . for the years 2002 and 2003 were found." (Letter from Wilson to Kirk dated Feb. 11, 2005, Ex. G to Kirk Aff.)

Second FOIA Request: On January 17, 2005, Mrs.. Kirk wrote to the DOL seeking VETS-100 reports filed by defendant for the years 1998, 1999, 2000, and 2001. (Letter from Kirk to Wilson dated Jan. 17, 2005, Ex. H to Kirk Aff.) In response, the DOL provided Schindler's 2001 report, and indicated that "no records . . . for the years 1998, 1999 and 2000" were found. (Letter from Wilson to Kirk dated Sept. 29, 2005, Ex. H to Kirk Aff.) The 2001 report, which covered the twelve-month period ending September 30, 2002, is referred to by Kirk as Schindler's "2002 Report."

Third FOIA Request: On April 10, 2007, Mrs. Kirk submitted a FOIA request for defendant's VETS-100 reports for the years 2005 and 2006. (Facsimile from Kirk to Wilson dated Apr. 4, 2007, Ex. I to Kirk Aff.) In response, the DOL provided each of the requested reports. (E-mail from Eric Rudert, Ass't Dir., Office of Agency Mgmt. and Budget, U.S. Dep't of Labor, to Kirk dated May 14, 2007, Ex. I to Kirk Aff.)

In light of this correspondence and the reports produced to relator as a result, Kirk alleges the following: first, that defendant never submitted VETS-100 reports for the years 1998 to 2001, and 2003 (Am. Compl. ¶ 60); second, that defendant initially failed to submit a report for 2002, but, upon learning of Kirk's

complaint to the DOL regarding this matter in 2004, belatedly submitted a 2002 Report (*id.* at ¶ 5); third, that the reports defendant did submit for the years 2002, 2004, 2005, and 2006, and that the DOL produced in response to the Kirks' FOIA requests, were incomplete, inaccurate, and improperly prepared. (*See e.g. Id.* ¶¶ 63, 68, 71-72.) Accordingly, Kirk concludes that during the entire period covered by the complaint, Schindler was not in compliance with VEVRAA's reporting requirements and therefore was "not eligible" for any of the contracts it received. (*Id.* ¶ 8.)

C. *Schindler's Submission of Allegedly False or Fraudulent Claims for Payment to the United States*

The complaint alleges that "[s]ince at least March 1999, Schindler has submitted hundreds of claims to agencies of the United States government seeking payment for construction services" and that "those claims were false" (Am. Compl. ¶ 2) because "at all times . . . Schindler was in violation of VEVRAA and was not eligible for payment." (*Id.* ¶ 8.) While Kirk "cannot . . . identify all of the false claims for payment that were caused by Schindler's conduct," (*id.* ¶ 95) he does advance at least three ways by which Schindler's course of conduct resulted in false claims. First, pursuant to 48 C.F.R. § 52.222-38, defendant "expressly certified to the United States that it was in compliance" with the VETS-100 reporting requirement each time it submitted a bid for a VEVRAA-covered contract. (*Id.* ¶¶ 75, 92.) Those certifications were "false statements [made] to

induce the government to enter into contracts for which Schindler was ineligible because it had not, in fact, complied with VEVRAA." (*Id.* ¶ 79.) Accordingly, Kirk argues that not only each bid, but also any claim for payment on a contract obtained as a result of those bids, constituted a false claim.

Second, because Schindler allegedly filed VETS-100 reports for several of the years covered by the complaint that were inaccurate, incomplete, or otherwise not in conformity with VEVRAA's requirements, it "knowingly made, used, or caused to be made or used false or fraudulent records and statements, and omitted material facts to induce the Government to approve and pay such false or fraudulent claims." (*Id.* ¶ 91.) Accordingly, Kirk contends that "each claim . . . seeking payment on a contract subject to VEVRAA for a fiscal year when [Schindler] had not filed an *accurate* VETS-100 represents a false or fraudulent claim for payment." (*Id.* ¶ 93.)

Finally, Kirk implies that because Schindler did not have an affirmative action program for veterans or allow veterans to self-identify, each claim submitted was a false claim because "Schindler was in violation of VEVRAA and was not eligible for payment." (*Id.* ¶ 74.)

II. ANALYSIS

A. *The Motion to Dismiss Standard*

Dismissal for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6) is appropriate where a plaintiff has failed to plead "enough facts to state a claim for relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). For purposes of that motion, a court assumes the truth of all facts asserted in the complaint and draws all reasonable inferences from those facts in favor of the plaintiff. *Global Network Commc'ns, Inc. v. City of New York*, 458 F.3d 150, 154 (2d Cir.2006).

By contrast, on a motion to dismiss for lack of subject-matter jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1), "the party invoking federal jurisdiction bears the burden of establishing that jurisdiction exists." *Sharkey v. Quarantillo*, 541 F.3d 75, 82-83 (2d Cir.2008) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). While the Court must accept as true all material facts alleged in the complaint, in resolving challenges to subject-matter jurisdiction the Court may look beyond the pleadings in order to satisfy itself that it has the authority to hear the action. *Filetech S.A. v. Fr. Telecom S.A.*, 157 F.3d 922, 932 (2d Cir.1998) (citing *Antares Aircraft, L.P. v. Fed. Republic of Nigeria*, 948 F.2d 90, 96 (2d Cir.1991)).

Appendix B

B. *The False Claims Act*

The FCA empowers the United States or private citizens on behalf of the United States to recover treble damages from those who knowingly make false claims for money or property to the United States government. The Act is designed to ensure that the federal government recovers "losses sustained as a result of fraud," S.Rep. No. 99-345, at 1 (1986) *reprinted in* 1986 U.S.C.C.A.N. at 5226, and provides an incentive to private citizens to bring suit on behalf of the government for a fraud about which they had personal knowledge by rewarding them with a portion of the government's recovery should they prevail.

To establish liability under the FCA, a plaintiff-whether the Attorney General or a relator-must establish that the defendant "(1) made a claim, (2) to the United States government, (3) that is false or fraudulent, (4) knowing of its falsity, and (5) seeking payment from the federal treasury." *Mikes v. Straus*, 274 F.3d 687, 695 (2d Cir.2001). The term "claim" is defined by the Act to cover "any request or demand, whether under contract or otherwise, for money or property." 31 U.S.C. § 3729(c). The phrase "false or fraudulent" is not statutorily defined. However, because the FCA is "intended to reach all types of fraud ... that might result in financial loss to the Government," *United States v. Neifert-White Co.*, 390 U.S. 228, 232, 88 S.Ct. 959, 19 L.Ed.2d 1061 (1968), the U.S. Court of Appeals for the Second Circuit has held that the phrase "false or fraudulent" claim is limited to "only those claims with

the potential wrongfully to cause the government to disburse money." *Mikes*, 274 F.3d at 696; *see also id.* ("[A]n improper claim is aimed at extracting money the government otherwise would not have paid.").[5]

A false claim may take several forms. In particular, the Second Circuit has recognized a distinction between "factually false" and "legally false" claims. While the former involves a request for reimbursement for goods or services not actually provided or not accurately described, the latter—often referred to as the "false certification theory"—applies where the defendant has falsely certified compliance with federal regulations as a condition to payment of its claim. *See Mikes*, 274 F.3d at 697.

Kirk here makes no allegation that Schindler submitted factually false claims, i.e., claims for work not actually provided or inaccurately described. Instead, Kirk seeks to invoke the false certification theory, alleging that Schindler either expressly or impliedly certified that it was in compliance with VEVRAA's requirements in order to receive payments for which it was ineligible.

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5. It is well established that for purposes of the FCA, the claim must be knowingly false, that is, made with "actual knowledge" or through "deliberate indifference" to the truth or falsity of the information, or in "reckless disregard" thereof. "Mere negligence" or an "innocent mistake" is insufficient. *Chen-Cheng Wang ex. rel. United States v. FMC Corp.*, 975 F.2d 1412, 1420 (9th Cir.1992) (citing 31 U.S.C. § 3729(b)).

Appendix B

1. False Certification Theory

First recognized by the Second Circuit in *Mikes*, 274 F.3d at 687, the false certification theory of liability is predicated on a false representation of compliance with a federal statute or regulation. The theory is finite in scope, and claims may be legally false "only where a party certifies compliance with a statute or regulation as a *condition to* government payment." *Id.* at 697 (emphasis added). Accordingly, the theory does not apply to all instances of noncompliance. In particular, it "does not encompass those instances of regulatory noncompliance that are irrelevant to the government's disbursement decisions." *Id.*

The Second Circuit has further delineated between "express" and "implied" false certification. An express false certification claim is one "that falsely certifies compliance with a particular statute, regulation or contractual term, where compliance is a prerequisite to payment." *Id.* at 698. By contrast, an implied false certification occurs where defendant submits a claim that does not include an express representation of compliance but from which a factfinder could conclude that the defendant impliedly certified its continuing compliance with the relevant statute. The Circuit has cautioned courts "not to read [the implied false certification] theory expansively" and accordingly, it is "appropriately applied only where the underlying statute or regulation upon which the plaintiff relies *expressly* states the provider must comply in order to be paid." *Id.* at 699-700 (emphasis in original).

Appendix B

Determining whether Kirk has stated a claim under the false certification theory requires a close evaluation of VEVRAA and its implementing regulations in the context of each class of false claims alleged.

2. Kirk's False Certification Claims

As noted, Kirk's complaint can be read to set forth three different ways in which Schindler allegedly submitted false certification claims. First, Schindler falsely certified compliance with its VETS-100 reporting requirements each time it submitted a bid pursuant to 48 C.F.R 52.222-38, rendering the ensuing contracts issued in reliance on those certifications false claims. Second, Schindler falsely certified its compliance with VEVRAA by submitting claims for payment on VEVRAA-covered contracts despite knowing that its VETS-100 reports were inaccurate, thereby rendering those claims false claims. Third, Schindler falsely certified its compliance with VEVRAA by submitting claims for payment on VEVRAA-covered contracts while knowing it did not have affirmative action programs for veterans or a procedure to allow veterans to self-identify as required by the statute.

Defendant, in its motion to dismiss, contends that the "only allegation that provides a basis for a claim under the FCA is the allegation that Schindler failed to file . . . 'VETS-100 Reports.' " (Def.'s Mem. of Law. in Supp. of Summ. J. at 1.) The Court agrees-only Kirk's first theory validly states a claim under the FCA.

Appendix B

First promulgated in 2001, 48 C.F.R 52.222-38 provides that "[b]y submission of its offer, the offeror represents that, if it is subject to the reporting requirements of [VEVRAA], it has submitted the most recent VETS-100 Report required by that [Act]." The language of the rule is clear-each bid submitted must contain an express representation that the offeror has complied with a particular provision of VEVRAA, i.e., that it has submitted its most recent VETS-100 report. The rule followed the mandate of Congress that "no agency may obligate or expend funds . . . to enter into a contract [covered by VEVRAA] with a contractor from which a [VETS-100] report was required . . . with respect to the previous fiscal year if such contractor did not submit such report." 31 U.S.C. § 1354(a). The certification required by 48 C.F.R. § 52.222-38 was therefore a condition to receiving a contract because no agency could enter into a contract with a bidder unless that bidder represented that it had submitted its most recent VETS-100 report. Accordingly, as a matter of law, Kirk's allegation that (1) Schindler submitted a bid covered by the rule,[6] and (2) therefore expressly certified that it had submitted its most recent VETS-100 report, (3) while knowing it had not submitted that report, (4) to win a contract it would otherwise not have been entitled to, and (5) that it was actually

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6. Because 48 C.F.R. 52.222-38 imposes the certification requirement critical to Kirk's claim, any contracts awarded before its adoption in October 2001 which were not covered by its express certification requirement fail to state a claim under the FCA. Those claims, therefore, are dismissed pursuant to Rule 12(b)(6).

awarded[7] validly states a claim of express false certification under the FCA.

None of Kirk's other theories of liability under FCA state a claim because no other aspect of VEVRAA or its implementing regulations imposes either express or implied certification requirements. Kirk's second theory of liability alleges that Schindler submitted false claims by seeking payment despite having filed *inaccurate* VETS-100 reports. However, Kirk fails to point to any provision of VEVRAA that required defendant to expressly attest to the accuracy of the reports. Kirk relies on the same rule-48 C.F.R § 52.222-38-and statute-31 U.S.C. § 1354(a). However, neither the rule nor the statute speaks to the accuracy of the report: the rule requires only a representation that the latest report was filed, and the statute bars agencies from contracting only "if [the] contractor did not submit a [VETS-100] report." 31 U.S.C. § 1354(a). Accordingly, the Court finds neither a basis for concluding that Schindler expressly certified that its reports were accurate nor a basis for concluding such a certification would have been a condition to payment.

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7. Numerous courts in this and other circuits have found that merely submitting a bid does not constitute a "claim" under the FCA. Instead, a bid becomes a "claim" when the bid is accepted and the bidder granted the contract. *See, e.g., United States ex rel. Taylor v. Gabelli*, 345 F.Supp.2d 313, 335-36 (S.D.N.Y.2004) (dismissing FCA action brought against *unsuccessful* bidders) (collecting cases). For purposes of this Opinion, the Court follows that body of precedent and limits relator's false certification theory claims to those instances where Schindler's bids were successful.

The Court also finds no basis for concluding that Schindler impliedly certified the accuracy of its reports. A claim of implied false certification exists only where the underlying statute "*expressly* states the provider must comply in order to be paid." *Mikes*, 274 F.3d at 700 (emphasis in original). Here, as noted, the statute says nothing about the accuracy of the report, and certainly does not state as an express condition to payment that the reports be accurate.[8]

Finally, Kirk's third theory of liability—that Schindler falsely certified its compliance with VEVRAA by submitting claims for payment while knowing that it did not have an affirmative action program for veterans or a procedure to allow veterans to self-identify as required by the statute—fails for similar reasons. Kirk can point to no statutory provision or implementing rule requiring Schindler to expressly certify-as a condition to payment-that it had an affirmative action program. Instead, Kirk argues that because VEVRAA mandates that each contract "shall contain a provision requiring that the party contracting with the United States take affirmative action to employ and advance in employment

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8. For the same reasons, the allegedly inaccurate reports also cannot state a claim under 31 U.S.C. § 3729(a)(2), which creates liability for any person who "knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government." Even assuming the VETS-100 reports constituted a "false record," those falsities did not "get a false or fraudulent claim paid" since the accuracy of the reports was not a condition to payment.

qualified covered veterans," 38 U.S.C. § 4212(a)(1), each time Schindler submitted a claim for a VEVRAA-covered contract, it impliedly certified compliance with the Act's provisions. Kirk's argument fails because section 4212(a)(1) does not *expressly* state that a provider must comply-that is, must actually institute an affirmative action program-as a condition of payment. Therefore, Schindler's submission of claims does not as a matter of law give rise to implied false certifications claims.[9]

None of the above is meant to suggest that "false is OK." (Pl.'s Mem. of Law. in Opp. to Summ. J. at 3.) It is simply to confirm that the FCA is not the appropriate avenue for challenging every alleged falsity submitted to the government or every instance of regulatory noncompliance. *See Mikes*, 274 F.3d at 697 ("[A] claim for reimbursement made to the government is not legally false simply because the [contractor] failed to comply with mandates of a statute, regulation, or contractual term that is *only tangential to* the service

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9. At most, section 4212(a)(1) creates what the Second Circuit in *Mikes* termed "conditions of participation, rather than prerequisites to receiving reimbursement." *Mikes*, 274 F.3d at 701-02. As the *Mikes* court explained, while a continuing failure to comply with a condition of participation may be grounds to render a contractor ineligible for future participation in the government program, alleged individual instances of noncompliance with a condition of participation do not give rise to claims under the FCA. *Id.* at 702. Moreover, in this case, VEVRAA, much like the Medicare statute at issue in *Mikes*, creates an express procedure for bringing allegations of noncompliance with conditions of participation to the attention of the government. *See* 38 U.S.C. § 4212(b).

for which reimbursement is sought." (emphasis added)). Instead, VEVRAA itself provides aggrieved veterans with a direct avenue for challenging a contractor's alleged noncompliance with the statute's requirements. *See* 38 U.S.C. § 4212(b). Specifically, "the veteran may file a complaint with the Secretary of Labor, who shall promptly investigate such complaint and take appropriate action." *Id.* Moreover, the Court notes that Kirk has in fact availed himself of that very procedure: on April 15, 2004, Kirk filed a complaint with the Secretary of Labor, the DOL's Office of Federal Contract Compliance Programs conducted an investigation, the investigation resulted in an official report finding no evidence of non-compliance, and Kirk has appealed that finding. (Exs. A-C to Kirk Aff.)[10]

Accordingly, the Court concludes that Kirk has stated a claim cognizable under the FCA only with regard to bids submitted after adoption of 48 C.F.R. 52.222-38 in October 2001 that led to the award of contracts covered by VEVRAA. All of Kirk's other claims, including his second and third theories of liability, fail as a matter of law to allege a violation of the FCA and should therefore be dismissed.

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10. Because the Court, in considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), cannot look beyond the pleadings, the facts surrounding relator's administrative hearing, all of which were submitted with affidavits in conjunction with this motion, cannot and do not serve as a basis for the Court's ruling. However, because they are undisputed and were submitted by the non-moving party, the Court includes them here simply for purposes of completing the narrative of the history of this case.

Appendix B

C. *The FCA Jurisdictional Bar*

As a limitation on the FCA's otherwise broad grant of authority to private citizens to bring actions on behalf of the United States, section 3730(e)(4)(A) of the Act strips courts of jurisdiction over claims that are:

> [B]ased upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

31 U.S.C. § 3730(e)(4)(A).

To evaluate whether a claim is in fact barred, courts consider three questions: "(1) whether there has been a 'public disclosure' of allegations or transactions, (2) whether the *qui tam* action is 'based upon' such publicly disclosed allegations, and (3) if so, whether the relator is the 'original source' of the information." *United States ex rel. Reagan v. E. Tex. Med. Ctr.*, 384 F.3d 168, 173 (5th Cir.2004) (quoting *United States ex rel. Laird v. Lockheed Martin Eng'g & Sci. Servs. Co.*, 336 F.3d 346, 352 (5th Cir.2003)). The first—whether there has been a "public disclosure" of the allegations or transactions—is the "bedrock of 3730(e)(4)(A)'s jurisdictional bar," *United States ex rel. Doe v. John Doe*

Corp., 960 F.2d 318, 322 (2d Cir.1992), and consideration of it requires a two-step inquiry: first, a court must determine whether the "allegations or transactions" underlying the fraud were publicly disclosed, and second, it must find that the disclosure came via a manner set forth in the statute, that is, through an "enumerated source." *Id.* at 323.[11]

Schindler contends that Kirk's properly stated FCA claims are based entirely upon information obtained through the DOI's responses to the Kirks' FOIA requests, that those responses constituted administrative investigations or reports as those terms are used in section 3730(e)(4)(A), that those investigations or reports publicly disclosed the allegations or transactions underlying his claims, and accordingly, that relator's claims are barred by statute. Kirk, for his part, contends that a response to a FOIA request is not an administrative investigation or report, and therefore, that DOI's responses did not publicly disclose the allegations or transactions via one of the statute's enumerated sources. Moreover, Kirk argues his claims are not "based upon" those disclosures

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11. As discussed below, the question of whether the statute's list of sources is exclusive is the subject of a split of authority. However, the Second Circuit has determined that section 3730(e)(4)(A)'s list of enumerated sources is exclusive. Accordingly, for relator's claims to be barred, this Court must determine not only that a public disclosure occurred but also that it occurred through an enumerated source. *See United States ex rel. Doe v. John Doe Corp.*, 960 F.2d 318, 323 (2d Cir.1992).

because he provides additional, independent evidence in support of his claims. Alternatively, Kirk contends he is an "original source" of the information.

While the parties are thus in disagreement regarding each of the elements of the jurisdictional inquiry, the core of their dispute lies in how the Court should construe information obtained through a FOIA request for purposes of the section 3730(e)(4)(A) bar. Both parties find support for their respective positions in the case law-while the Second Circuit has never addressed the issue, the question of whether information obtained through a FOIA request is "publicly disclosed" for purposes of section 3730(e)(4)(A) remains the subject of a split of authority among the other circuits[12] as well

12. The Third Circuit, in a widely cited opinion, has held that information obtained through a FOIA request was publicly disclosed through one of the statute's enumerated sources because the response constituted an administrative investigation and report. *See United States ex rel. Mistick PBT v. Hous. Auth. of the City of Pittsburgh*, 186 F.3d 376, 382-84 (3d Cir.1999) (Alito, J.); *see also United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168, 175-76 (5th Cir.2004) (same). The Sixth and Tenth Circuits have taken the position that information obtained through a FOIA request is publicly disclosed for purposes of section 3730(e)(4)(A) without determining whether that section's list of enumerated sources is exclusive, and accordingly, whether a response to a FOIA request constitutes an administrative investigation or produces an administrative report. *See United States ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038 (10th Cir.2004); *United States v. A.D. Roe Co.*, 186 F.3d 717 (6th Cir.1999) (same). By contrast,

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as the trial courts in this district.[13]

A distinct split in authority also exists over whether the statute's enumerated list of sources of disclosure is exclusive. Specifically, several courts have held that a response to a FOIA request is a "public disclosure" triggering the jurisdictional bar without finding the need to additionally consider whether it is a public disclosure via one of the statute's enumerated sources, *see, e.g.*, *United States ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038 (10th Cir.2004), while others have found that a response to a FOIA request was not a disclosure via one of section 3730(e)(4)(A)'s enumerated sources and

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the Ninth Circuit has held that a response to a FOIA request is not a public disclosure for purposes of the statutory bar unless the response "is from one of the sources enumerated in the statute." *United States ex rel. Haight v. Catholic Healthcare W.*, 445 F.3d 1147, 1153 (9th Cir.2006). And the Fourth Circuit, in a footnote to an unpublished opinion, has suggested that a response to a FOIA request is not an enumerated source, and accordingly, information thereby obtained is not barred by section 3730(e)(4)(A). *United States ex rel. Bondy v. Consumer Health Found.*, 28 Fed.Appx. 178, 181 n. 2 (4th Cir.2001).

13. *See United States ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc.*, 495 F.Supp.2d 375, 380 (S.D.N.Y.2007) (suggesting in dicta that information obtained through state Freedom of Information Law request was publicly disclosed for purposes of § 3730(e)(4)). *But see United States ex rel. Pentagen Techs. Int'l. Ltd. v. CACI Int'l., Inc.*, No. 94-Civ.-2925, 1996 WL 11299, at *9 (S.D.N.Y. Jan. 4, 1996) (documents acquired under the FOIA are not publicly disclosed within the meaning of section 3730(e)(4)(A)).

have stopped without addressing whether information obtained through a FOIA request was "publicly disclosed." *See United States ex rel. Bondy v. Consumer Health Found.*, 28 Fed.Appx. 178, 181 n. 2 (4th Cir.2001).

The Second Circuit has held, in the context of a different form of disclosure, that section 3720(e)(4)(A)'s list of sources is "exclusive," *see Doe*, 960 F.2d at 323, and so for Kirk's claim to be barred, the allegations or transactions underlying his claims must have been publicly disclosed via one of section 3720(e)(4)(A)'s enumerated sources. Resolving this motion, therefore, requires the Court to address two questions left open in this Circuit and subject to dispute in other circuits and the courts of this district: first, whether a response to a FOIA request qualifies as an administrative investigation or report within the meaning of section 3730(e)(4)(A) and, if so, whether information thereby obtained has been "publicly disclosed" for purposes of the statutory bar.

Because the Court finds, on these facts, (1) that the DOL's responses to the Kirks' FOIA requests constituted administrative investigations and reports, (2) that those investigations and reports publicly disclosed the allegations or transactions underlying Kirk's claims, (3) that those claims are "based upon" the public disclosure, and (4) that Kirk was not an original source of the information, it concludes that Kirk's remaining claims are statutorily barred.

Appendix B

1. Public Disclosure via an Enumerated Source

As noted, the public disclosure inquiry consists of two distinct components. First, a court must determine whether the allegations or transactions have been publicly disclosed, and second, if so, whether they have been disclosed through one of section 3730(e)(4)(A)'s enumerated sources.

a. Public Disclosure . . . .

Allegations of fraud are "publicly disclosed when they are placed in the 'public domain.' " *Doe*, 960 F.2d at 322 (quoting *United States ex rel. Dick v. Long Island Lighting Co.*, 912 F.2d 13, 18 (2d Cir.1990)). However, they need not be "widespread" or "widely disseminated." *Id.* at 323. In fact, the Second Circuit has cited approvingly the finding of another court that actual access by anyone other than the relator is irrelevant, because only "*potential* accessibility by those not a party to the fraud [is] the touchstone of public disclosure." *Id.* at 322 (emphasis added) (citing with approval *United States ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Prudential Ins. Co.*, 944 F.2d 1149 (3d Cir.1991)). Accordingly, the Second Circuit has construed the public disclosure bar to preclude "*qui tam* suits based on information that would have been equally available to strangers to the fraudulent transaction had they chosen to look for it as it was to the relator." *United States ex rel. Kreindler & Kreindler v. United Techs. Corp.*, 985 F.2d 1148, 1158 (2d Cir.1993) (quotations and citations omitted).

Applying that standard, the Second Circuit has held that information obtained through civil discovery has been "publicly disclosed" for purposes of the statutory bar because it was filed with the court and available to anyone who wished to inspect the court file. *Id.* It has also found that allegations of corporate fraud disclosed by federal agents to a limited number of corporate employees in the course of executing a search warrant were publicly disclosed, emphasizing the fact that even a limited disclosure was sufficient to put the allegations or transactions in the "public domain." *Doe*, 960 F.2d at 322-23.

In light of the Second Circuit's articulated standard and its past application, this Court concludes that information provided in response to the Kirks' FOIA requests was "publicly disclosed" for purposes of section 3730(e)(4)(A). The information, while not "widely disseminated," was in the public domain. It was potentially accessible to anyone capable of submitting a FOIA request. And critically, for purposes of assessing whether the information was sufficiently publicly disclosed to trigger the statutory bar, it "would have been equally available to strangers to the fraudulent transaction had they chosen to look for it as it was to" the Kirks. *Accord United States ex rel. Anti-Discrimination Ctr. of Metro N.Y. v. Westchester County*, 495 F.Supp.2d 375, 380-81 (S.D.N.Y.2007) (information obtained through state law FOIL request "is publicly disclosed information since it was as 'equally available'

to others as it was to the Center, had others 'chosen to look for it' " (quoting *Kreindler & Kreindler*, 985 F.2d at 1158)).

The conclusion that the information provided in response to the Kirks' FOIA requests was "publicly disclosed" is bolstered by the fact that the very purpose of the FOIA is to ensure that agencies "make available *to the public*" certain categories of information. 5 U.S.C. § 552(a) (emphasis added); *see also United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 774, 109 S.Ct. 1468, 103 L.Ed.2d 774 (1989) (the "central purpose" of FOIA is to ensure that government records are "opened to the sharp eye of public scrutiny"). Accordingly, the U.S. Supreme Court has held that information obtained in response to a FOIA request was a "public disclosure" for purposes of the Consumer Product Safety Act, *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108-09, 100 S.Ct. 2051, 64 L.Ed.2d 766 (1980). Finding that the DOI's response to the Kirks' requests publicly disclosed the information in question, therefore, is consistent not only with this Circuit's FCA precedent, but also with both the statutory language and the Supreme Court's understanding of the purpose behind the FOIA.

For similar reasons, the overwhelming majority of courts to address the question have concluded that information obtained in response to a FOIA request constitutes a "public disclosure" for purposes of section 3730(e)(4)(A). *See, e.g.*, *Mistick*, 186 F.3d at 383; *Grynberg*, 389 F.3d at 1049; *Burns*, 186 F.3d at 723.

Indeed, the Court is aware of no circuit-level finding to the contrary.[14]

One court in this district has concluded that information obtained through a FOIA request was not "publicly disclosed." *See United States ex rel. Pentagen Techs. Int'l Ltd. v. CACI Int'l Inc.*, No. 94-Civ.-2925, 1996 WL 11299 (S.D.N.Y. Jan. 4, 1996). That court reasoned that information obtained through FOIA, unlike information obtained through civil discovery, was not in the public domain because it was not lodged with a court but merely disclosed to a private citizen. *Id.* at *9. This Court finds that reasoning unpersuasive. When the DOL responded to the Kirks' FOIA requests, it disclosed "to the public" the information sought. 5 U.S.C. § 552(a). That only one person placed the FOIA requests rather

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14. As discussed below, the Ninth Circuit has held that information obtained through a FOIA request is not disclosed through one of section 3730(e)(4)(A)'s enumerated sources, that the list statute's list is "exclusive," and accordingly, that information obtained through a FOIA request does not bar an FCA action unless the information "is from one of the enumerated sources." *Haight*, 445 F.3d at 1152. However, that Court did not dispute that if the response to a FOIA request included information from one of the statute's enumerated sources, the response "publicly disclosed" that information for purposes of the jurisdictional bar. *Id.* at 1156. The Fourth Circuit similarly observed, in a footnote to an unpublished opinion, that section 3730(e)(4)(A)'s list of sources was exclusive and that a response to a FOIA request was not on it. But like the Ninth Circuit, it expressed no opinion as to whether or not the information obtained through a FOIA request was "publicly disclosed." *See Bondy*, 28 Fed.Appx. at 181 n. 2.

than one thousand does not render the responses "private." It merely means the disclosures were not widespread. And as noted, the Second Circuit has clearly considered—and rejected—a "widespread" or "widely disseminated" public disclosure requirement, instead requiring, at most, the *potential* for more widespread accessibility. That requirement is satisfied on these facts because the information in question here was just as accessible to any member of the public as it was to the Kirks had others chosen to look for it. Accordingly, the information disclosed by the DOL to the Kirks pursuant to their FOIA requests was in the public domain, and therefore, was "publicly disclosed" for purposes of section 3730(e)(4)(A).

b. . . . of the Allegations or Transactions . . .

Having so found, the Court pauses briefly to consider whether the public disclosure included the "allegations or transactions" underlying relator's claims. The Second Circuit has not yet addressed the question of what disclosure is necessary to meet that standard, but courts that have considered the issue have all adopted similar approaches. The D.C. Circuit has articulated a "mathematical illustration" endorsed by several other courts whereby:

> [I]f X + Y = Z, Z represents the *allegation* of fraud and X and Y represent its essential elements. In order to disclose the fraudulent *transaction* publicly, the combination of X and Y must be revealed from which readers or

> listeners may infer Z, i.e. the conclusion that fraud has been committed.

United States ex rel. Springfield Terminal Ry. v. Quinn, 14 F.3d 645, 654 (D.C.Cir.1994). As the D.C. Circuit explained more generally, "Congress sought to prohibit *qui tam* actions only when either the allegation of fraud or the critical elements of the fraudulent transaction were in the public domain." *Id.* The Tenth Circuit, while declining to adopt a "mathematical formula," has similarly found claims barred where, after the relevant disclosure, "the public domain contained *all* the elemental aspects of the allegedly fraudulent transaction." *Grynberg*, 389 F.3d at 1050.

Adopting that reasoning, this Court looks to whether, after the relevant disclosure, all the critical elements of the alleged fraudulent transaction were in the public domain. *Accord United States ex rel. Huangyan Imp. & Exp. Corp. v. Nature's Farm Prods., Inc.*, No. 00-6593, 2004 WL 74310, at *3 (S.D.N.Y. Jan. 15, 2004)(SHS) ("Put in words rather than single letters, a *qui tam* action is barred where there is enough information in the public domain to expose the fraud.") The "critical elements" of Kirk's claim are: (1) Schindler obtained contracts (2) requiring an express certification pursuant to 48 C.F.R. § 52.222-38 that Schindler had filed VETS-100 reports, and (3) Schindler had not actually filed those reports. Indisputably, the first element has long been in the public domain. Indeed, in his pleadings, Kirk provides lists of Schindler's government contracts that he obtained from the

Department of Veterans Affairs public website. (Exs. B-F to Am. Compl.) Similarly, the second element can be readily deduced from the public domain—the same website Kirk relies on lists the value of each contract and the date it was entered into, all the information necessary to determine whether the contract would be covered by VEVRAA and 48 C.F.R. § 52.222-38, both of which are also in the public domain.

The third element, to the extent relator avers he can establish it, must come directly from the DOL's series of responses to the Kirks' FOIA requests because Kirk offers no other basis for a factfinder to conclude that Schindler failed to file VETS-100 reports. Since the Court has already determined that those FOIA responses "publicly disclosed" the information contained therein for purposes of section 3730(e)(4)(A), after those responses, each element of Kirk's claim was in the public domain, and accordingly, the "allegations or transactions" underlying this action had been publicly disclosed.

c. . . . Via an Enumerated Source

Having determined that the DOL's response to Kirk's FOIA requests constituted a "public disclosure of [the] allegations or transactions" underlying relator's claims, the Court must next consider whether the disclosure was made via one of the statute's enumerated sources. Schindler contends that the Kirks' FOIA requests prompted administrative investigations within the meaning of the statute, and that the DOL's responses constituted administrative reports. The Court agrees.

Appendix B

Each time the DOL received one of the Kirks' FOIA requests, it was required to look into the matters underlying the request; determine what, if any, information was responsive to the request; and produce to the requesting party the documents sought, or an explanation for why the documents could not be provided or were exempt from disclosure. As the Third Circuit concluded on very similar facts, that process, which was undertaken by the DOL (unquestionably an "administrative" body), entailed an "investigation" and produced a "report" as those words are commonly used and defined. *See Mistick*, 186 F.3d at 383-84. Indeed, the Oxford English Dictionary defines an "investigation" as the "making of a search or inquiry" and a "report" as "a formal statement of the results of an investigation." *Accord id.* (collecting definitions of both terms). Here, the Kirks' requests were handled by the Chief of the Investigation and Compliance Division within the DOL's Office of Veteran's Employment and Training, who, in his own words, conducted a "search," made a "determination" and produced, on official stationary, a document setting forth the results of his inquiry. (*See, e.g.*, Ex. G to Kirk Aff.) Consistent with standard definitions of both terms, that process entailed an "investigation" and produced a "report."[15]

15. While the first two FOIA requests where handled for the DOL by the Chief of the Investigation and Compliance Division, the Kirks' third FOIA request was handled by the Assistant Director of the Office of Agency Management and Budget for the Veterans Employment and Training Service. That official responded by describing a similar investigatory process and producing a similar report (Ex. I to Kirk Aff.), and for purposes of this analysis, the difference is irrelevant.

Appendix B

Relying heavily on one Ninth Circuit opinion, Kirk argues that a response to a FOIA request is "not necessarily a report or investigation, although it can be, if it is from one of the sources enumerated in the statute." *Haight*, 445 F3d at 1153. Kirk argues that since the information requested and produced in this case did not itself stem from one of section 3730(e)(4)(A)'s enumerated sources, the DOL's responses to the Kirks' FOIA requests are likewise not from an enumerated source. The argument is unconvincing.

The Ninth Circuit's opinion rests on a distinction it sought to draw between FOIA requests on the one hand and government investigations and reports on the other. As that court argued, "a FOIA request is a mechanism for duplicating records that are in the possession of the federal government" while, "[i]n contrast, reports and investigations generally involve independent work product" and "independent governmental leg-work." *Id.* (internal citations and quotations omitted). Accordingly, "labeling any response to a FOIA request a 'report' or 'investigation' would ignore the way in which each of the enumerated sources involves government work product." *Id.*

Whatever validity that general distinction might have in other contexts, it is belied by the facts presented here. In this case, the DOL's Chief of Investigation and Compliance within the DOL's Office of Veteran's Employment and Training conducted a search and prepared a letter detailing that search and its results, a work process that produced a substantive government

work product, facts Kirk does not appear to dispute. That the investigation and the resulting report may not have been lengthy does not obscure the fact that an administrative body conducted an investigation and produced a report disclosing to members of the public the critical elements of Kirk's claims. Simply put, before the DOL responded to the Kirks' FOIA requests, this relator had no claim-no personal knowledge sufficient to support even an allegation that Schindler had defrauded the government. *Cf. United States ex rel. Lamers v. City of Green Bay*, 998 F.Supp. 971, 977 (E.D.Wis.1998) ("The basic *qui tam* idea is that private citizens with *personal knowledge* of fraud against the government may bring suit on the government's behalf in return for a cut of the judgment proceeds should they prevail." (emphasis added)); *see also United States ex rel. Lissack v. Sakura Global Capital Mkts., Inc.*, No. 95-civ.1363, 2003 WL 21998968, at *4 (S.D.N.Y. Aug. 21, 2003) (same).

Therefore, on these facts, the Court finds that the allegations or transactions underlying Kirk's claims were publicly disclosed via one of section 3730(e)(4)(A)'s enumerated sources.

2. "Based Upon"

For the jurisdictional bar to apply, the relator's claims must also be "based upon" the public disclosure. That requirement is satisfied if "the *qui tam* action . . . is based *in any part* upon publicly disclosed allegations or transactions." *Kreindler & Kreindler*, 985 F.2d at 1158

(quoting *United States ex rel. Precision Co. v. Koch Indus.*, 971 F.2d 548, 553 (10th Cir.1992)) (emphasis added).

Here, Kirk's claims are plainly "based upon" the publicly disclosed allegations or transactions. As noted in detail above, the public disclosures form the core of Kirk's claims, serving as his only evidence of the most critical element of his claim-that Schindler allegedly failed to file VETS-100 reports for several of the years covered by this action.[16] That Kirk claims to be able to supplement the publicly disclosed information by contributing additional knowledge gleaned during his time as an "insider" is irrelevant, since the standard is met if the FCA action is based "in any part" on the publicly disclosed allegations or transaction.

The Court therefore finds Kirk's action to be "based upon" the publicly disclosed allegations or transactions.

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16. Lest there be any dispute that the DOL's responses to the Kirk's FOIA requests served as Kirk's sole basis for concluding that Schindler failed to file VETS-100 reports for the years covered by the complaint, the Court takes note of the fact that Kirk's administrative challenge to Schindler's VEVRAA compliance, filed several months *before* the DOL responded to the Kirks' FOIA requests, makes no mention of Schindler's alleged failure to file VETS-100 reports in a timely fashion, despite otherwise alleging every other complaint and VEVRAA violation specified in this action. (Ex. A to Kirk Aff.)

Appendix B

3. Original Source

Finally, Kirk argues that even if his claim is based upon allegations or transactions that were publicly disclosed via an enumerated source, his action is not barred because he is the "original source" of the information. An original source is an "individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government prior to filing an action . . . which is based on the information." 31 U.S.C. § 3730(e)(4)(B). The Supreme Court has recently clarified that the phrase "information on which the allegations are based" in the statute refers to the "information upon which the [relator's] allegations are based." *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 470-71, 127 S.Ct. 1397, 167 L.Ed.2d 190 (2007).

Kirk fails to qualify as an original source because he cannot establish "direct and independent knowledge" of the information on which his allegations were based prior to the DOL's response to his FOIA request. As the Second Circuit has explained, "a *qui tam* plaintiff does not satisfy the [direct and independent knowledge] requirement if a third party is 'the source of the core information' upon which the *qui tam* complaint is based." *United States ex rel. Dhawan v. N.Y. Med. College*, 252 F.3d 118, 121 (2d Cir.2001) (quoting *Kreindler & Kreindler*, 985 F.2d at 1159). Here, as set forth at length above, the DOL-through its responses to the Kirks' FOIA requests-was the source of the "core information" upon which his complaint is based.

Moreover, the fact that Kirk did some "independent research" to compile the information relevant to his allegations by submitting a FOIA request or obtaining lists of Schindler's government contracts from a government website does not render him the original source of those claims. *See Kreindler & Kreindler*, 985 F.2d at 1159 ("The fact that [relator] conducted some collateral research and investigations regarding the [fraud] . . . does not establish 'direct and independent knowledge of the information on which the allegations are based' within the meaning of § 3730(e)(4)(B)."); *see also United States ex rel. Alcohol Found., Inc. v. Kalmanovitz*, 186 F.Supp.2d 458, 463 (S.D.N.Y.2002) (relator not an "original source" despite contending that it's allegations constituted a " 'mosaic' of information that shows a fraud that an average member of the public could neither understand . . . nor perceive a fraud" from).

Therefore Kirk cannot qualify as an "original source" of the information upon which the allegations are based.

III. CONCLUSION

Because the Court finds that many of Kirk's allegations fail to state a claim under the FCA and that Kirk's remaining claims are barred as "publicly disclosed" pursuant to 31 U.S.C. § 3730(e)(4)(A), defendant's motion to dismiss the amended complaint is granted. The Clerk of Court is directed to enter judgment dismissing the complaint.

SO ORDERED.

APPENDIX C — RELEVANT STATUTES AND REGULATIONS

31 U.S.C. § 3729

§ 3729. False claims

(a) Liability for certain acts.—

(1) In general.—Subject to paragraph (2), any person who—

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of

property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410), plus 3 times the amount of damages which the Government sustains because of the act of that person.

Appendix C

(2) Reduced damages.—If the court finds that—

> **(A)** the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
>
> **(B)** such person fully cooperated with any Government investigation of such violation; and
>
> **(C)** at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,
>
> the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

Appendix C

(3) Costs of civil actions.—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.—For purposes of this section—

(1) the terms "knowing" and "knowingly" —

(A) mean that a person, with respect to information—

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term "claim"—

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government—

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-

based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) Exemption from disclosure.—Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) Exclusion.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

31 U.S.C. § 3730

§ 3730. Civil actions for false claims

(a) Responsibilities of the Attorney General.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) Actions by private persons.—

(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action

shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the parties to qui tam actions.—

(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2) (A) The Government may dismiss the action notwithstanding the objections of the person initiating the

action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without

limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if

the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to qui tam plaintiff.—

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation,

or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

Appendix C

(e) Certain actions barred.—

(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2) (A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4) (A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

(f) Government not liable for certain expenses.— The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) Fees and expenses to prevailing defendant.— In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

Appendix C

(h) Relief from retaliatory actions.—

(1) In general.—Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter.

(2) Relief.—Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

Appendix C

UNITED STATES PUBLIC LAWS
111th Congress - Second Session
Convening January 05, 2010

PL 111-148 (HR 3590)
March 23, 2010
PATIENT PROTECTION AND
AFFORDABLE CARE ACT

An Act Entitled The Patient Protection
and Affordable Care Act.
Be it enacted by the Senate and House of
Representatives of the United States of America
in Congress assembled,

* * *

SECTION 10104.

(j)(2) Section 3730(e) of title 31, United States Code, is amended by striking paragraph (4) and inserting the following:

"(4)(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—

> "(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

"(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

"(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

"(B) For purposes of this paragraph, 'original source' means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section."

Appendix C

31 U.S.C. § 1354

§ 1354. Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements

(a) (1) Subject to paragraph (2), no agency may obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract described in section 4212(a) of title 38 with a contractor from which a report was required under section 4212(d) of that title with respect to the preceding fiscal year if such contractor did not submit such report.

(2) Paragraph (1) shall cease to apply with respect to a contractor otherwise covered by that paragraph on the date on which the contractor submits the report required by such section 4212(d) for the fiscal year concerned.

(b) The Secretary of Labor shall make available in a database a list of the contractors that have complied with the provisions of such section 4212(d).

Appendix C

38 U.S.C. § 4212

§ 4212. Veterans' employment emphasis under Federal contracts

(a) (1) Any contract in the amount of $100,000 or more entered into by any department or agency of the United States for the procurement of personal property and nonpersonal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States take affirmative action to employ and advance in employment qualified covered veterans. This section applies to any subcontract in the amount of $100,000 or more entered into by a prime contractor in carrying out any such contract.

(2) In addition to requiring affirmative action to employ such qualified covered veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the Secretary of Labor shall prescribe regulations requiring that—

(A) each such contractor for each such contract shall immediately list all of its employment openings with the appropriate employment service delivery system (as defined in section 4101(7) of this title), and may also list

such openings with one-stop career centers under the Workforce Investment Act of 1998, other appropriate service delivery points, or America's Job Bank (or any additional or subsequent national electronic job bank established by the Department of Labor), except that the contractor may exclude openings for executive and senior management positions and positions which are to be filled from within the contractor's organization and positions lasting three days or less;

(B) each such employment service delivery system shall give such qualified covered veterans priority in referral to such employment openings; and

(C) each such employment service delivery system shall provide a list of such employment openings to States, political subdivisions of States, or any private entities or organizations under contract to carry out employment, training, and placement services under chapter 41 of this title.

(3) In this section:

(A) The term "covered veteran" means any of the following veterans:

(i) Disabled veterans.

(ii) Veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized.

(iii) Veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order No. 12985 (61 Fed. Reg. 1209).

(iv) Recently separated veterans.

(B) The term "qualified", with respect to an employment position, means having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability.

Appendix C

(b) If any veteran covered by the first sentence of subsection (a) believes any contractor of the United States has failed to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor, who shall promptly investigate such complaint and take appropriate action in accordance with the terms of the contract and applicable laws and regulations.

(c) The Secretary of Labor shall include as part of the annual report required by section 4107(c) of this title the number of complaints filed pursuant to subsection (b) of this section, the actions taken thereon and the resolutions thereof. Such report shall also include the number of contractors listing employment openings, the nature, types, and number of positions listed and the number of veterans receiving priority pursuant to subsection (a)(2)(B).

(d) (1) Each contractor to whom subsection (a) applies shall, in accordance with regulations which the Secretary of Labor shall prescribe, report at least annually to the Secretary of Labor on—

(A) the number of employees in the workforce of such contractor, by job category and hiring location, and the number of such employees, by job category and hiring location, who are qualified covered veterans;

(B) the total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are qualified covered veterans; and

(C) the maximum number and the minimum number of employees of such contractor during the period covered by the report.

(2) The Secretary of Labor shall ensure that the administration of the reporting requirement under paragraph (1) is coordinated with respect to any requirement for the contractor to make any other report to the Secretary of Labor.

Appendix C

48 C.F.R. § 22.1310

22.1310 - Solicitation provision and contract clauses.

(a) (1) Insert the clause at 52.22235, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in solicitations and contracts if the expected value is $25,000 or more, except when (i) Work is performed outside the United States by employees recruited outside the United States; or (ii) The Deputy Assistant Secretary of Labor has waived, in accordance with 22.1305(a) or the head of the agency has waived, in accordance with 22.1305(b) all of the terms of the clause.

(2) If the Deputy Assistant Secretary of Labor or the head of the agency waives one or more (but not all) of the terms of the clause, use the basic clause with its Alternate I.

(b) Insert the clause at 52.22237, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in solicitations and contracts containing the clause at 52.22235, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

(c) Insert the provision at 52.22238, Compliance with Veterans' Employment Reporting Requirements, in solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

Appendix C

48 C.F.R. § 52.222-37

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

As prescribed in 22.1310(b), insert the following clause:

Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS–100, entitled "Federal Contractor Veterans" Employment Report (VETS–100 Report)".

(c) The Contractor shall submit VETS–100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam

era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

(1) The information is voluntarily provided;

(2) The information will be kept confidential;

(3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and

(4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

Appendix C

48 C.F.R. § 52.222-38

52.222-38 Compliance with Veterans' Employment Reporting Requirements.

As prescribed in 22.1310(c), insert the following provision:

COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 Report required by that clause.

OPPOSITION BRIEF

109

No. 10-188

Supreme Court, U.S.
FILED
AUG 20 2010
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

SCHINDLER ELEVATOR CORPORATION,

Petitioner,

—v.—

UNITED STATES OF AMERICA EX REL. DANIEL KIRK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under a recently superseded version of the False Claims Act's "public disclosure" bar, 31 U.S.C. § 3730(e)(4)(A) (1986), whether every response to a Freedom of Information Act request constitutes an "administrative report or investigation" regardless of the form or content of the response.

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 13

I. THERE IS NO DIRECT CONFLICT AMONG THE COURTS OF APPEALS 14

A. Schindler's Petition Rests on a Misstatement of the Issue 15

B. The Purported "Conflict" Concerns Only One Part of the Public Disclosure Analysis 18

II. THE QUESTION PRESENTED IS CONTROLLED BY AN OBSOLETE STATUTE AND MAY BE RESOLVED BY *GRAHAM COUNTY* 21

A. The Statute Has Been Superseded . 21

1. Deletion of "administrative" to modify "reports or investigations" 22

PAGE

2. Disclosure of "substantially the same" allegations 23

B. The Graham County Decision May Resolve the Issue 24

C. Because of Unresolved Factual Questions, the FOIA Issue is Not Determinative Here 25

III. THE CASE-BY-CASE APPROACH OF THE NINTH AND SECOND CIRCUITS IS CORRECT 28

A. The Decision Below Properly Reflects the Balance Adopted by the 1986 Act 28

B. Schindler's Fear of FOIA is Unfounded 32

CONCLUSION 35

TABLE OF AUTHORITIES

PAGE

Federal Cases

Catholic Healthcare West v. U.S. ex rel. Haight, 549 U.S. 1077 (2006) 15

Duncan v. Walker, 533 U.S. 167, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001) 31

Graham County Soil & Water Conservation Dist. v. U.S. ex rel. Wilson, 130 S. Ct. 1396, 176 L. Ed. 2d 225 (2010), *reh'g denied*, 130 S. Ct. 3351 (2010) ..... *passim*

Hibbs v. Winn, 542 U.S. 88, 124 S. Ct. 2276, 159 L. Ed. 2d 172 (2004) 31

Hughes Aircraft Co. v. U.S. ex rel. Schumer, 520 U.S. 939, 117 S. Ct. 1871, 138 L. Ed. 2d 135 (1997) 4, 6

Jarecki v. G. D. Searle & Co., 367 U.S. 303, 81 S. Ct. 1579, 6 L. Ed. 2d 859 (1961) 29

Mikes v. Straus, 274 F.3d 687 (2d Cir. 2001) 10

Rockwell Int'l Corp. v. United States, 549 U.S. 457, 127 S. Ct. 1397, 167 L. Ed. 2d 190 (2007) 4

U.S. ex rel. Brown v. Merant Inc., Civ. 99-6481, 2002 WL 487160 (E.D. Pa. Mar. 29, 2002) 20

PAGE

U.S. ex rel. Doe v. John Doe Corp.,
960 F.2d 318, (2d Cir. 1992) 3

U.S. ex rel. Durcholz v. FKW Inc.,
997 F. Supp. 1159, (S.D. Ind. 1998)
aff'd, 189 F.3d 542 (7th Cir. 1999) 20

U.S. ex rel. Eisenstein v. City of New York, 129 S. Ct. 2230
173 L.Ed.2d 1255 (2009)..... 2

U.S. ex rel. Ervin & Associates, Inc. v. Hamilton Sec. Group, Inc.,
332 F. Supp. 2d 1 (D.D.C. 2003) 20

U.S. ex rel. Grynberg v. Praxair, Inc.,
389 F.3d 1038 (10th Cir. 2004) 17

U.S. ex rel. Haight v. Catholic Healthcare West, 445 F.3d 1147 (9th Cir. 2006) ...*passim*

U.S. ex rel. Kirk v. Schindler,
601 F.3d 94 (2010) .....*passim*

U. S. ex rel. Marcus v. Hess,
317 U.S. 537, 63 S. Ct. 379,
87 L. Ed. 443 (1943) 2

U.S. ex rel. Mistick PBT v. Hous. Auth. of Pittsburgh, 186 F.3d 376
(3d Cir. 1999) .....*passim*

U.S. ex rel. Ondis v. City of Woonsocket,
587 F.3d 49 (1st Cir. 2009)..... 19

U.S. ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.,
384 F.3d 168 (5th Cir. 2004) 15, 17

PAGE

U.S. ex rel. Richardson v. E-Sys.,
3:90-CV-0607-P, 1999 WL 324666
(N.D. Tex. May 18, 1999) 17

U.S. ex rel. Rost v. Pfizer Inc.,
507 F.3d 720 (1st Cir. 2007) 3

U.S. ex rel. Yannacopolous v. Gen. Dynamics,
315 F. Supp. 2d 939 (N.D. Ill. 2004).... 21

U.S. v. Varca, 896 F.2d 900 (5th Cir.),
cert. denied, 498 U.S. 878 (1990) 22

U.S. v. Williams, 553 U.S. 285, 128 S. Ct.
1830, 170 L. Ed. 2d 650 (2008)..... 29

Federal Statutes

5 U.S.C. § 552(a)(3)(A) 30

31 U.S.C. § 1354 ..... 1, 2, 7, 12

31 U.S.C. § 3729 ..... 2, 8

31 U.S.C. § 3729(a) 2

31 U.S.C. § 3729(a)(1) 33

31 U.S.C. § 3729(a)(1)(B) 12

31 U.S.C. § 3730(a) 2

31 U.S.C. § 3730(b)(1) 2

31 U.S.C. § 3730(b)(4) 3

31 U.S.C. § 3730(b)(4)(B) 10

31 U.S.C. § 3730(c)(2) 34

31 U.S.C. § 3730(c)(5) 34

PAGE

31 U.S.C. § 3730(e)(4) 3

31 U.S.C. § 3730(e)(4)(A) ..... *passim*

38 U.S.C. § 4212 ..... 2, 6

Patient Protection and Affordable Care Act, Pub. L. No. 111; Stat. 119 (2010) .. 4, 5, 23

STATEMENT OF THE CASE

This action concerns a statute, first enacted in 1972, that requires companies with large government contracts to adopt policies to promote the hiring and advancement of veterans and to report the number of such employees to the U.S. Department of Labor. *See* Vietnam Era Veterans Readjustment Assistance Act, 38 U.S.C. § 4212 ("VEVRAA"). Since Congress amended the law in 1998, *see* 31 U.S.C. § 1354, contractors who ask for payment from the government knowing that they are not in compliance with VEVRAA, or who falsely report their compliance to the government, have been liable under the False Claims Act. The present action was brought by a whistleblower, Daniel Kirk, who alleges that his former employer, Schindler Elevator Corporation ("Schindler") sought payment for claims when it was not in compliance with VEVRAA and filed false reports to create the appearance of compliance. The Second Circuit properly held that the district court has subject matter jurisdiction, even though Mr. Kirk used the Freedom of Information Act ("FOIA") to obtain documents relating to his claim.

In its petition, Schindler misstates the issue and the holding below. The Second Circuit did not hold that FOIA responses generally are "not reports or investigations" within the meaning of the public disclosure bar. *See* Petition for Writ of Certiorari ("Pet.") at 2. Instead, the court merely held that the question requires a case-by-case determination that "depends on the nature of the document itself." Pet. App. 23a. By adopting this fact-specific analysis rather than the categorical rule pre-

ferred by other Circuits, the court below did not substantially change the widely accepted standard for resolving issues under the public disclosure bar. The "direct, irreconcilable conflict' described by Schindler, Pet. 10, is a minor disagreement under an obsolete statute. It does not merit review.

1. The Statutory Framework

The False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq.*, provides for the imposition of civil penalties and treble damages against any person who, *inter alia*, knowingly presents or causes to be presented a false or fraudulent claim for payment or approval by the United States. 31 U.S.C. § 3729(a). The Attorney General may bring a civil action if he finds that a person has committed a violation. 31 U.S.C. § 3730(a). Alternatively, a private person (known as a relator) may bring his own suit (commonly referred to as a *qui tam* action) "for the person and for the United States Government." 31 U.S.C. § 3730(b)(1); see *United States ex rel. Eisenstein* v. *City of New York*, 129 S. Ct. 2230, 2232, 173 L.Ed.2d 1255 (2009).

Before 1943, the FCA permitted relators who read newspapers or followed court proceedings or Congressional hearings to litigate *qui tam* actions based on such publicly disclosed information known by the government. *U. S. ex rel. Marcus v. Hess*, 317 U.S. 537, 63 S. Ct. 379, 87 L. Ed. 443 (1943). In 1943, Congress amended the Act to prohibit all *qui tam* lawsuits when the government "possessed prior knowledge" of the fraud. Later amendments barred FCA actions where the suit "was based upon evidence or information in the

possession of the United States, or any agency, officer, or employee thereof, at the time such suit was brought. . . ." *See* 31 U.S.C. § 3730(b)(4) (1982 ed.).

In 1986, Congress amended the FCA to encourage whistleblowers to file *qui tam* actions. Among the amendments was section 3730(e)(4)(A), which permitted *qui tam* actions even if the government already had knowledge of a possible claim. Congress repealed the "government knowledge" bar because "*qui tam* actions under the FCA had gone in forty years from unrestrained profiteering to a flaccid enforcement tool." *U.S. ex rel. Doe v. John Doe Corp.*, 960 F.2d 318, 321 (2d Cir. 1992). The 1986 statute contained "narrowly circumscribed exceptions to *qui tam* jurisdiction" intended to encourage "private citizens to expose fraud" while avoiding "the blatant opportunism embodied in cases like *Marcus*." *Id.* "The 1986 amendments sought to achieve the two goals of discouraging 'parasitic' or 'free-loading' *qui tam* suits while also encouraging productive private enforcement suits." *U.S. ex rel. Rost v. Pfizer Inc.*, 507 F.3d 720, 729 (1st Cir. 2007).

This is the balance that Congress intended: on the one hand, the 1986 amendments preclude parasitic suits based on an indictment, newspaper article or similar public information describing a fraudulent scheme. On the other hand, the amendments encourage FCA actions by allowing a citizen who learns of fraudulent activities to pursue a *qui tam* action when the public, and the government, are not aware of the fraud.

From 1986 until early 2010, the FCA's "public disclosure" provision stated:

> (4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office [(GAO)] report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.
>
> (B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

31 U.S.C. § 3730(e)(4) (1986 ed.); *Hughes Aircraft Co. v. U.S. ex rel. Schumer*, 520 U.S. 939, 944, 117 S. Ct. 1871, 138 L. Ed. 2d 135 (1997). This version of 31 U.S.C. § 3730(e)(4) established a non-waivable limitation on the subject-matter jurisdiction of the federal courts. *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 467-70, 127 S. Ct. 1397, 167 L. Ed. 2d 190 (2007).

On March 23, 2010, however, the President signed into law the Patient Protection and Affordable Care Act ("PPACA"), Pub. L. No. 111-148, 124 Stat. 119 (2010). The PPACA amends the FCA's "public disclosure" provision. Specifically, Section 10104(j)(2) of the PPACA replaces the 1986 version of 31 U.S.C. § 3730(e)(4) and provides:

> (4)(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed—
>
> (i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; (ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or (iii) from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.
>
> (B) For purposes of this paragraph, "original source" means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

See Graham County Soil & Water Conservation Dist. v. U.S. ex rel. Wilson, 130 S. Ct. 1396, 1400, n.1, 176 L. Ed. 2d 225 (2010), *reh'g denied*, 130 S. Ct. 3351 (2010) (noting the legislative change).

As this Court noted in *Graham County*, PPACA "makes no mention of retroactivity, which would

be necessary for its application to pending cases given that it eliminates [the defendants'] claimed defense to a *qui tam* suit." *Id.*, 130 S. Ct. at 1400 n.1; *see Hughes Aircraft*, 520 U.S. at 945-952 (declining to give retroactive effect to FCA amendment that expanded the range of circumstances in which *qui tam* suits could be filed).

Accordingly, the question presented in this case, which involves the application of the FCA's "public disclosure" provision to respondent's complaint, is governed by the 1986 version of 31 U.S.C. § 3730(e)(4).

2. Mr. Kirk's Complaint

Plaintiff-relator Daniel Kirk brought this action to recover damages and civil penalties on behalf of the United States of America arising from false and fraudulent records and claims presented by Schindler in violation of the FCA. Mr. Kirk alleges that, since at least March 1999, Schindler has submitted hundreds of false claims to agencies of the United States government seeking payment for construction services relating to the manufacture, installation and maintenance of elevators in public buildings.

Schindler's major contracts with the government are subject to VEVRAA. The act requires Schindler (a) to adopt an affirmative action program for Vietnam-era veterans, (b) to offer its employees an invitation to identify themselves as Vietnam-era veterans separate from any other personnel form or questionnaire, and (c) to submit annual reports, known as VETS-100 reports, to the U.S. Department of Labor. 38 U.S.C. § 4212. Contractors must file a report for each "hiring

location" that enters into a government contract covered by the law.

In his complaint, Mr. Kirk alleges that, during the six-year period from 1999 to 2005, Schindler failed to meet these requirements. It had no affirmative action program for veterans and did not ask its employees to identify themselves as veterans. As a result, many Vietnam-era veterans who were entitled to protection under VEVRAA found themselves fired or transferred by Schindler as they approached retirement age, as Schindler tried to avoid paying their pensions and other benefits. Pet. App. 7a-11a.

The complaint alleges that Schindler knowingly failed to file the required VETS-100 reports for any of its business units until late 2004. When Mr. Kirk brought this situation to the attention of the Department of Labor, Schindler filed false VETS-100 reports in a desperate attempt to bring itself into compliance and maintain its eligibility for government contracts. The complaint does not merely allege that the reports are inaccurate, but that Schindler deliberately filed false reports, knowing that it lacked any information about the numbers and classifications of its covered veteran employees. Pet. App. 8a-10a.

In 1998, Congress enacted the Veterans Employment Opportunities Act, 31 U.S.C. § 1354, to prohibit any agency of the United States from obligating or expending funds for any fiscal year on a contract subject to VEVRAA with a contractor who failed to submit a VETS-100 report for that fiscal year. Despite that clear prohibition, Schindler falsely certified in its bids, contracts and claims for payment that it was in compliance

with VEVRAA. Schindler submitted bids and claims knowing that it was not eligible either to enter into contracts or to collect payments because it had not complied with the VETS-100 reporting requirement. Schindler also allowed itself to be listed as an eligible contractor by the Department of Labor, knowing that it had failed to file any VETS-100 forms or otherwise to comply with the requirements of VEVRAA. Pet. App. 10a-11a.

Mr. Kirk alleges that the United States paid Schindler millions of dollars to which it was not entitled. Under the False Claims Act, each of the requests for payment submitted by Schindler is a false claim. Schindler is liable to the United States for up to $11,000 for each payment request. In addition, the government is entitled to treble damages for funds paid to Schindler on the basis of these false claims. 31 U.S.C. § 3729.

3. The Department of Labor's FOIA Responses

In November 2004, Linda Kirk submitted a request to the Department of Labor under the Freedom of Information Act for copies of any VETS-100 reports filed by Schindler in 2002, 2003 or 2004. DOL responded to the FOIA request on February 20, 2005, providing three redacted copies of VETS-100 reports submitted by Schindler dated September 30, 2004. In a letter to Mrs. Kirk, DOL further stated that no VETS-100 reports were found for the years 2002 or 2003. Pet. App. 56a-58a.

In January 2005, Mrs. Kirk submitted a second Freedom of Information Act request to the Depart-

ment of Labor for copies of any VETS-100 reports filed by Schindler for the years 1998 through 2001. In September 2005, the Office of the Assistant Secretary for Veterans Employment and Training responded, in a letter addressed to Mrs. Kirk and mailed to plaintiff's home, that the Labor Department had located no VETS-100 reports for the years 1998, 1999 or 2000. In the same letter, the Department of Labor provided a collection of VETS-100 reports for Schindler covering the 12-month period ending September 30, 2002. Based on the Department of Labor's discovery of these reports between January and September 2005, it appears that Schindler submitted the reports for 2002 more than two years after they were required to be filed. As explained in the complaint, these reports are false and incomplete. Pet. App. 56a-58a.

In April 2007, Mrs. Kirk submitted a third FOIA request for to the Department of Labor for copies of any VETS-100 reports filed by Schindler for the years 2005 and 2006. In May 2007, the Office of the Assistant Secretary for Veterans Employment and Training provided copies of certain VETS-100 reports submitted by Schindler for the years ending September 30, 2005 and September 30, 2006. As explained in the complaint, Schindler's VETS-100 reports for 2005 and 2006 are false and incomplete. Pet. App. 8a-9a.

4. Proceedings in the District Court

The action was filed in March 2005 and sealed pursuant to the False Claims Act until June 2007, when the Department of Justice notified the District Court of its decision not to intervene pur-

suant to 31 U.S.C. § 3730(b)(4)(B). The court unsealed the original complaint on June 11, 2007, and Mr. Kirk filed his Amended Complaint on June 22, 2007. (App. 12, 261.) Schindler filed a motion to dismiss the Amended Complaint on September 4, 2007. Pet. App. 11a. The court granted that motion in an opinion and order dated March 30, 2009.

The district court held that "most of Kirk's allegations fail to state a claim upon which relief can be granted pursuant to the FCA." Pet. App. 52a. Relying on *Mikes v. Straus*, 274 F.3d 687 (2d Cir. 2001), the district court concluded that the Amended Complaint stated only one valid claim for relief: the allegation that Schindler falsely certified compliance with VEVRAA in conjunction with its bids for new contracts when in fact it had failed to file a required VETS-100 form. Pet. App. 64a-66a. Pursuant to Rule 12(b)(6), the court dismissed claims based on Schindler's submission of false VETS-100 forms and its failure to comply with the affirmative action and self-identification requirements of VEVRAA. Pet. App. 66a-67a.

The court then concluded that the remainder of the Amended Complaint was barred by section 3730(e)(4)(A). Pet. App. 87a. The district court held that the government's FOIA response constituted "public disclosure of allegations or transactions" and that Mr. Kirk's remaining claim was "based upon" information in the FOIA response. Pet. App. 79a-85a. As a result, the court decided that it lacked subject matter jurisdiction over the claim based on Schindler's allegedly false VETS-100 reports. The district court never considered whether the public disclosure bar applied to the

claim based on Schindler's failure to file VETS-100 reports.

5. Proceedings in the Court of Appeals

In reversing the district court's holding on the public disclosure issue, the Second Circuit laid out the generally accepted five-part test:

> [I]n order for the FCA's jurisdictional bar to apply there must be (1) "public disclosure" of the information (2) on which the allegation of fraud rests, and (3) this "public disclosure" must occur through one of the sources enumerated in the statute. In addition, the statute indicates that (4) the public disclosure (via an enumerated source) must be of the material elements of the "allegations or transactions" on which the claim is based. . . . If it is established that the allegations or transactions at issue were publicly disclosed through an enumerated source, a *qui tam* plaintiff may avoid dismissal under the jurisdictional bar by establishing (5) that she was an "original source" of the relevant information.

U.S. ex rel. Kirk v. Schindler, 601 F.3d 94 (2010) at Pet. App. 14a (numbers added for illustration). On the first element of the test, the Court of Appeals observed: "[E]very circuit to have considered this issue has determined that information produced in response to a Freedom of Information Act request becomes public once it is received by the requester." Pet. App. 15a. The Court then moved to the third element of the test and concluded that the documents produced to Mr.

Kirk under FOIA were not "administrative reports or investigations." Pet. App. 33a. On that basis, the Court concluded that the district court should have denied Schindler's motion to dismiss the complaint for lack of subject matter jurisdiction.

This holding made it unnecessary for the Court to consider whether the allegations in Mr. Kirk's complaint are "based upon" the information that he obtained from the government's FOIA response (the second element of the test). 31 U.S.C. § 3730(e)(4). There was also no need to consider whether the FOIA response disclosed the material elements of the "allegations or transactions" on which the claim is based, or whether Mr. Kirk is an original source of the information in the complaint. Pet. App. 33a, n.10. These fact-intensive issues remain unresolved.

The Second Circuit then decided that the Amended Complaint properly stated two claims for relief under the FCA. First, because the Veterans Employment Opportunities Act, 31 U.S.C. § 1354, states that the contractor must have submitted the VETS-100 report in order to be paid, a contractor that requests payment under such a contract certifies compliance with the reporting requirement. The complaint therefore states a valid claim under the FCA when it alleges that Schindler submitted bids and won contracts without having filed the requisite report. Pet. App. 41a. Second, the FCA establishes liability when a party "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim." 31 U.S.C. § 3729(a)(1)(B). The complaint alleges that Schindler filed false VETS-100 reports, knowing

that they were false because Schindler in fact had no mechanism in place to identify covered veterans. It did so in order to procure contracts or obtain payment under existing contracts, as it could do neither without filing the reports. Accordingly, it knowingly used a false record in order to obtain payment from the government. Pet. App. 43a-44a.

REASONS FOR DENYING THE WRIT

The question presented by Schindler does not warrant review by this Court. Congress revised the public disclosure provision of the FCA earlier this year, requiring for the first time that the public disclosure must involve "substantially the same allegations or transactions" as the complaint and amending the core term "administrative report or investigation." 31 U.S.C. § 3730(e)(4) (2010 ed.). The lower courts' disagreement about the application of that term to FOIA responses is now relevant only to the dwindling number of cases that are controlled by the old statute. Because the question presented concerns the interpretation of a superseded statutory provision, it is not of sufficient continuing importance to warrant plenary review by this Court.

Even if the statute had not been superseded, the question truly presented in this case would be too narrow to warrant review because the disagreement among the Circuits changes the outcome in a very small number of cases. Schindler misstates the issue as an all-or-nothing dispute, as if FOIA responses must be "administrative reports or investigations" always, or never. Pet. 8. In fact,

the Second Circuit and Ninth Circuit have merely adopted a case-by-case approach, and there is no basis to conclude that this approach always yields different results than the categorical approach favored by other circuits. At best, the purported "conflict" concerns only one small part of the analysis required by the 1986 version of the public disclosure bar.

Moreover, as the Second Circuit held below, this Court's recent decision in *Graham County* provides important guidance on the interpretation of the public disclosure bar, and may resolve the limited question presented by Schindler. The lower courts should be given an opportunity to consider that guidance before this Court addresses the same statute again.

Finally, there are fact-specific issues that were not addressed by the Second Circuit in its analysis of the public-disclosure issue. Even if this Court were to grant certiorari and reverse, the question of the district court's subject matter jurisdiction would not be resolved. Accordingly, the Court should deny the petition for a writ of certiorari.

1. THERE IS NO DIRECT CONFLICT AMONG THE COURTS OF APPEALS

Following the Ninth Circuit's decision in *U.S. ex rel. Haight v. Catholic Healthcare West*, 445 F.3d 1147 (9th Cir. 2006), the defendants therein filed a petition for a writ of certiorari. The petition asked this Court to decide the same issue raised here: "Whether documents obtained by a *qui tam* relator pursuant to the Freedom of Information Act constitute public disclosures within the mean-

ing of the False Claims Act's jurisdictional bar." *See* Petition for a Writ of Certiorari, 2006 WL 2519582 (Aug. 25, 2006). At the time of the petition, three circuits had ruled on the issue, so the disagreement was well-established.[1] This Court denied the petition in *Catholic Healthcare West v. U.S. ex rel. Haight*, 549 U.S. 1077 (2006). The same result is required here.

A. Schindler's Petition Rests on a Misstatement of the Issue

Beginning with the "question presented," the petition offers a misleading description of the issue raised in this action. *See* Pet. 1. Schindler describes a false dichotomy between the Second and Ninth Circuits' purported view that a federal agency's response to a FOIA response is *never* an administrative report or investigation, and other circuits' view that a FOIA response is *always* an administrative report or investigation. This version of the purported conflict is repeated throughout Schindler's petition. *See, e.g.*, Pet. 13 ("Three circuits—the First, Third and Tenth—have held categorically that a FOIA response is a 'report' or 'investigation.' . . . Two Circuits—the Second and the Ninth—have squarely ruled to the contrary.")

Schindler's effort to manufacture a "true conflict" among the circuits, *id.* at 13, is misleading. As the Second Circuit stated below: "The specific

[1] In addition to the Ninth Circuit, the Fifth and Third Circuits had addressed the issue as of 2006. *See United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168, 175-76 (5th Cir. 2004); *United States ex rel. Mistick PBT v. Hous. Auth. of Pittsburgh*, 186 F.3d 376, 383 (3d Cir. 1999).

question we face is whether a document produced in response to a FOIA request is always an 'administrative . . . report . . . or investigation.'" After considering that question, the court adopted a case-by-case approach. "[W]e agree with the Ninth Circuit that whether a document obtained through a FOIA request is an enumerated source within the meaning of § 3730(e)(4)(A) depends on the nature of the document itself." Pet. App. 23a. The terms "report" and "investigation" do not "include any and all materials produced in response to a FOIA request." Pet. App. 24a. Instead, some documents produced in response to a FOIA request qualify as an enumerated source and some do not, depending on the content of the documents. Pet. App. 32a.

In *Haight*, the Ninth Circuit emphasized that its disagreement with other courts is not categorical: "[A] response to a FOIA request is not necessarily a report or investigation, although it can be, if it is from one of the sources enumerated in the statute." *Haight*, 445 F.3d at 1153. The court then examined the documents disclosed to the *qui tam* relator: "In this instance, the FOIA response consisted only of alerting Haight to the location of the documents. . . . Far from putting any work product into those documents, in this instance the FOIA response did not even involve duplication." *Id.* at 1155. On this basis, the court declined to adopt a categorical approach to the issue. "The specific facts of this case illustrate how ill-fitting the labels of 'report' or 'investigation' can be for responses to FOIA requests." *Id.*

The two lines of decisions merely take different approaches that, in many cases, lead to the same

result. If the government agency responds to a FOIA request by taking a document from its files and turning it over to the requesting party, and if that document is a "report, hearing, audit, or investigation" within the meaning of section 3730(e)(4), then the choice between the categorical approach of *Mistick* and *Reagan* and the case-by-case approach of *Kirk* and *Haight* will make no difference to the outcome. For example, in one of the cases cited by Schindler, *U.S. ex rel. Richardson v. E-Sys.*, 3:90-CV-0607-P, 1999 WL 324666 (N.D. Tex. May 18, 1999), the plaintiff used FOIA to obtain "investigative reports . . . by the Air Force's Office of Special Investigations and the Department of Defense Inspector General." By any standard, these reports fall within the scope of the sources enumerated in the statute. Similarly, in *U.S. ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038, 1049 (10th Cir. 2004), the court observed that a letter produced from agency files pursuant to FOIA was clearly "an administrative report, a source falling squarely within those listed in § 3730(e)(4)(A)." Again, the choice between the categorical approach to FOIA responses and the case-by-case approach made no difference.

In short, Schindler misstates the issue as an all-or-nothing conflict marked by "flatly contradictory results." Pet. 14. The truth is that the disagreement is nuanced and case specific, and often has no practical effect.

B. The Purported "Conflict" Concerns Only One Part of the Public Disclosure Analysis

The lower courts broadly agree on the five-point test used by the Second Circuit in this case. The issue raised by Schindler relates only to one small part of this test: whether FOIA responses are always one of the enumerated sources of public disclosure under the 1986 version of the False Claims Act. The rule adopted by the Second and Ninth Circuits is best described as an *exception* to the general rule that FOIA responses are enumerated sources.[2] This narrow disagreement is overshadowed by the broad agreement among the courts.

As noted above, the Second Circuit utilized the generally accepted five-part test to decide this case:

> [I]n order for the FCA's jurisdictional bar to apply there must be (1) "public disclosure" of the information (2) on which the allegation of fraud rests, and (3) this "public disclosure" must occur through one of the sources enumerated in the

[2] In *Haight*, "the Ninth Circuit created *an exception* [to the rule announced in *Mistick*] for a response to a FOIA request, holding that the particular response was not a report or investigation within the meaning of section 3730(e)(4)(A). . . . It remains to be seen whether *this exception* will be limited to the unique facts of this case, or whether it will be extended to other FOIA responses that may require little or no cognizance, independent analysis or legwork, but do release information to the public." Boese, J., *Civil False Claims and Qui Tam Actions*, at 4-74, 4-75 (3rd ed., 2010) (emphasis added).

> statute. In addition, the statute indicates that (4) the public disclosure (via an enumerated source) must be of the material elements of the "allegations or transactions" on which the claim is based. . . . If it is established that the allegations or transactions at issue were publicly disclosed through an enumerated source, a *qui tam* plaintiff may avoid dismissal under the jurisdictional bar by establishing (5) that she was an "original source" of the relevant information.

App. Pet. 14a (numbers added for illustration). With respect to the present issue, the courts agree that FOIA responses are public, even if they are sent directly to the *qui tam* relator. Pet. App. 15a. The courts agree that the disclosure must be one of the statutorily specified types: a civil, criminal or administrative hearing; a federal investigation, audit or report; or a news article. They agree that a report or investigation must disclose relevant fraudulent allegations or transactions and that the *qui tam* complaint must be based, at least in part, on that information. They agree that the public disclosure bar does not apply if the relator is an original source of the information. *See generally U.S. ex rel. Ondis v. City of Woonsocket*, 587 F.3d 49, 53 (1st Cir. 2009) (describing similar "multi-part inquiry").

All that remains is a narrow disagreement: whether a FOIA response is *always* an administrative report or investigation. The Third Circuit and other courts following *Mistick* say "yes," while the *Haight* and *Kirk* decisions say "not always" and require an additional step: an examination of

"the nature of the document itself." Pet. App. 23a. If the document itself is one of the types of documents listed in the statute, then the result will be the same. The result will be different *only* if the "document itself" is not an enumerated source *and* all of the remaining four steps in the analysis point toward dismissal of the complaint.

In the 24 years since Congress adopted the 1986 version of the public disclosure bar, this limited disagreement has changed the result in only a small number of cases. Indeed, Schindler has located only 25 cases where the issue of FOIA responses arose at all. Pet. 17 & n.10. Schindler does not contend that the purported conflict has changed the result in all of these cases. In many of them, courts have held that a FOIA response is an enumerated source, only to find that the public disclosure bar is inapplicable because another element of the five-part test is not satisfied. *See, e.g., U.S. ex rel. Ervin & Associates, Inc. v. Hamilton Sec. Group, Inc.*, 332 F. Supp. 2d 1, 10 (D.D.C. 2003) (finding FOIA material and newspaper articles are 'public disclosures' but denying motion to dismiss on original source grounds); *U.S. ex rel. Brown v. Merant Inc.*, Civ. 99-6481, 2002 WL 487160 (E.D. Pa. Mar. 29, 2002) (denying motion where the FOIA response is an enumerated source, but the complaint is not based on the publicly disclosed information); *U.S. ex rel. Durcholz v. FKW Inc.*, 997 F. Supp. 1159, 1165 (S.D. Ind. 1998) *aff'd*, 189 F.3d 542 (7th Cir. 1999) (sustaining complaint because, although FOIA material is an enumerated source, "the principle allegations of fraud were not disclosed" in the FOIA response).

In one case cited by Schindler, the district court explicitly noted that the FOIA issue was immaterial. *U.S. ex rel. Yannacopolous v. Gen. Dynamics*, 315 F. Supp. 2d 939 (N.D. Ill. 2004). The court held that, "because the 1986 Amendments to section 3730(e)(4)(A) did not textually include FOIA information among the list of disclosures considered public, FOIA information is not encompassed by the public disclosure bar." *Id.* at 951-52. But the court's analysis did not end there. "Even if relator's FOIA material had been a 'public disclosure,' moreover, defendants fail to persuade the court that those documents reveal the essential elements of relator's current fraud allegations." *Id.*

In sum, Schindler's petition raises a minor disagreement concerning a small part of the public disclosure analysis under an old version of the FCA, not a conflict relating to an important matter worthy of Supreme Court review.

II. THE QUESTION PRESENTED IS CONTROLLED BY AN OBSOLETE STATUTE AND MAY BE RESOLVED BY *GRAHAM COUNTY*

A. The Statute Has Been Superseded

As Schindler recognizes, the public disclosure bar was recently amended. The new version specifies that "for the jurisdictional bar to apply, 'substantially the same allegations or transactions' must be publicly disclosed in a . . . *federal* report, hearing, audit, or investigation, or by the news media." Pet. App. 13a-14a, n.4 (original emphasis). This amendment changes the statute in at

least two respects that are relevant here. First, it deletes the word "administrative" from the statute. Second, it emphasizes the *content* of the public disclosure rather than its *source* by requiring for the first time that the "allegations and transactions" disclosed to the public must be "substantially the same" as those described in the complaint.

1. Deletion of "administrative" to modify "reports or investigations"

Because this action is controlled by the old version of the public disclosure bar, the Second Circuit properly considered whether the documents at issue here are "administrative reports or investigations"—the same question considered by the courts in *Mistick*, *Haight*, *Reagan* and other cases. But future cases will not raise that question because that phrase is no longer in the False Claims Act. This Court has routinely denied certiorari where the issue turns on construction of an obsolete or superseded statute, even when there is a square conflict among the Circuits. *E.g.*, *U.S. v. Varca*, 896 F.2d 900, 905-06 (5th Cir.) (noting circuit split relating to amended statute), *cert. denied*, 498 U.S. 878 (1990).

Schindler tries to avoid this issue by repeatedly dropping the word "administrative" from its description of the purported conflict. *See* Pet. 1, 10, 14. But that word has been critical to the analysis of this issue since *Mistick*. In that case, the court separately analyzed "administrative" to determine whether a FOIA response fit into the old statutory language. 186 F.3d at 383. In the present case, the Second Circuit included the word

when it stated the issue: "whether materials produced by a government agency pursuant to a FOIA request are *administrative reports or investigations* within the meaning of the FCA's jurisdictional bar." Pet. App. 17a (emphasis added); *see also id.* at 27a (issue turns on construction of "FOIA materials as 'administrative reports' or the product of an 'administrative investigation'").

Schindler argues that the substitution of "federal" for "administrative" is inconsequential, but that judgment is not for Schindler to make. Pet. 14, n.9. It would be premature for this Court to address the question before a substantial number of lower courts have considered it. Those courts may well determine that the new statute puts less emphasis on the type of report or investigation than the old statute, and more emphasis on the content of the report. It is too soon to know whether the lower courts will answer this question consistently.

2. Disclosure of "substantially the same" allegations

Schindler wholly ignores the principal revision to the public disclosure bar in PPACA. For the first time, the statute limits the jurisdictional bar to those cases where "substantially the same allegations or transactions" as those contained in the *qui tam* complaint have been publicly disclosed in one of the enumerated sources. The phrase "based upon the public disclosure" (the fourth element of the five-part test employed by the Second Circuit below) is no longer in the statute. Analysis of the new statute will focus first on a comparison between the complaint and the content of the pub-

licly disclosed material to determine whether they describe the same fraudulent transactions and allegations of misconduct.

This new analysis appears to be consistent with the Second Circuit's holding in this case: "whether a document obtained through a FOIA request is an enumerated source within the meaning of section 3730(e)(4)(A) depends on the nature of the document itself." Pet. App. 23a. But the important point is that the new statute transforms the public disclosure question. The widely accepted multipart analysis simply does not track the language of the current False Claims Act.

This Court should not address this issue before giving the lower courts an opportunity to determine whether FOIA responses trigger the public disclosure bar under the newly amended statute. A disagreement about a term of art in an obsolete version of a statute does not present an "important matter" for Supreme Court review. Sup. Ct. R. 10.

B. The *Graham County* Decision May Resolve the Issue

In *Mistick*, the Third Circuit discussed at length the difficulty of analyzing a poorly phrased statute filled with grammatical errors and "awkward" usage. 186 F.3d at 387 ("Section 3730(e)(4)(A) does not reflect careful drafting or a precise use of language"). This Court provided new guidance for resolving such difficulties in *Graham County*. After analyzing the term "administrative"—now deleted from the statute—this Court provided detailed instructions for the proper construction of the list of sources of public disclosures in the

False Claims Act. 130 S.Ct. at 1402-03. The Court looked at all of the enumerated sources in the statute, not merely a subset of them, and evaluated the terms "within the larger scheme of the public disclosure bar." *Id.* at 1404.

The Second Circuit, deciding *Kirk* only a week after *Graham County*, was the first court to apply these instructions to the FOIA issue. It evaluated the meaning of "administrative report or investigation" not by looking at the dictionary definition of these words in isolation, but by understanding the words in the context of the whole statute. Pet. App. 23a. "[W]e have taken guidance from the Supreme Court's decision in *Graham County*, in which the Court directly addressed the application of this canon to the FCA's jurisdictional bar." Pet. App. 24a-25a, n.6. The Second Circuit concluded that "the terms 'hearing,' 'report,' 'audit,' and 'investigation' all refer to processes of uncovering and analyzing information or to the products of those processes. Our interpretation focuses on their shared 'core of meaning.'" *Id.*

Because *Graham County* provides new instructions for construing the public disclosure bar, the purported conflict is likely to disappear as the lower courts reconsider their earlier decisions. The Supreme Court should not revisit the same statute before the lower courts have an opportunity to consider its recent ruling.

C. Because of Unresolved Factual Questions, the FOIA Issue is Not Determinative Here

The question raised by Schindler's petition is complicated by other legal and factual questions

that were not fully resolved by the courts below. Mr. Kirk has argued, among other things, that the FOIA response by the Department of Labor did not disclose the "allegations or transactions" of Schindler's fraud and that he is an original source. These are highly fact-specific issues that are not appropriate for review by this Court. For example:

- The agency letters state that "no records . . . were *found*" for certain years. Pet. App. 57a (emphasis added). The district court mistakenly misread that statement as a determination that "Schindler had not actually filed those reports." Pet. App. 80a-81a. But nothing in the FOIA material addresses the question of whether Schindler *filed* reports, a key legal requirement of VEVRAA, 38 U.S.C. § 4212.

- The FOIA material also says nothing about the allegedly false statements and omissions in the VETS-100 reports. Schindler was required to disclose how many employees in certain categories were military veterans; in many categories, Schindler said "zero." But Mr. Kirk personally knows many employees in these categories who should have been counted. Pet. App. 10a. Neither court below found that the FOIA responses disclosed Schindler's failure to count veterans and accurately report to the government.

- The district court ignored the factual record when it concluded that Mr. Kirk is not an original source.[3] Mr. Kirk was employed by Schindler for nearly 25 years. He knows first-hand that Schindler did not comply with VEVRAA because, although he had management and personnel responsibilities, Mr. Kirk never saw an affirmative action plan and never participated in any self-identification process for veterans. Mr. Kirk also has direct and independent knowledge of Schindler's contracting practices and of several specific government contracts. Pet. App. 7a-10a.

The Second Circuit expressly declined to decide these fact-specific questions. Pet. App. 33a, n.10.

As noted above, the disagreement about the status of FOIA responses concerns only a small part of the public disclosure analysis. The result will be different *only* if the "document itself" is not an enumerated source *and* all of the remaining four steps in the analysis point toward dismissal of the

[3] Schindler cites the district court's decision for the proposition that the FOIA responses provided the "sole basis" for Mr. Kirk's allegation that Schindler failed to file certain VETS-100 reports. Pet. 18. This is not correct. The complaint and Mr. Kirk's affidavit are full of additional support for this allegation. The district court erroneously believed that Schindler had filed a motion to dismiss under Rule 12(b)(6) and so limited its decision to the four corners of the complaint. In fact, as the Second Circuit observed, there was no 12(b)(6) motion. Mr. Kirk's affidavit should have been considered in opposition to Schindler's motion pursuant to Rule 12(b)(1).

complaint. Here, even if this Court granted the petition and reversed on the narrow question presented by Schindler, the outcome of Schindler's motion to dismiss the Amended Complaint would remain unresolved.

In short, the 1986 version of the public disclosure bar has been superseded, the *Graham County* decision may resolve the FOIA issue, and the narrow question presented will not decide this case. For all of these reasons, the petition does not raise an issue of compelling importance.

III. THE CASE-BY-CASE APPROACH OF THE NINTH AND SECOND CIRCUITS IS CORRECT

A. The Decision Below Properly Reflects the Balance Adopted by the 1986 Act.

The Second Circuit carefully followed this Court's recent guidance in *Graham County* when it decided that a case-by-case approach best satisfies the statutory language and legislative purpose of the public disclosure bar. This ruling should not be disturbed.

Schindler recognizes that some courts have relied on "dictionary definitions" to interpret the phrase "administrative report or investigation," while other courts have applied the *noscitur a sociis* canon to select a definition that is consistent with Congressional intent. Pet. 22. The Second Circuit chose the second method:

> In applying the *noscitur a sociis* canon, we have taken guidance from the Supreme Court's decision in [*Graham County*], in which the Court directly addressed the

> application of this canon to the FCA's jurisdictional bar. Our interpretation follows the Court's counsel that "*all* of the sources listed in § 3730(e)(4)(A) provide interpretive guidance," not merely the immediate neighbors of the term. We also have not used the canon to inject into a word a meaning that would otherwise be wholly absent. Rather, we use it as a guide in sifting through the common understandings of "report" and "investigation" to discover their intended meaning within the FCA. We likewise have not used the canon to impose commonality on terms that "do not share any . . . core of meaning." To the contrary, the terms "hearing," "report," "audit," and "investigation" all refer to processes of uncovering and analyzing information or to the products of those processes. Our interpretation focuses on their shared "core of meaning."

Pet. App. 24a-25a, n.6 (citations omitted). As the Second Circuit recognized, this method of statutory interpretation is often used by this Court to determine the precise meaning of commonplace words. *See United States v. Williams*, 553 U.S. 285, 294, 128 S. Ct. 1830, 1838, 170 L. Ed. 2d 650 (2008) (where terms "are susceptible of multiple and wide-ranging meanings . . . those meanings are narrowed by the commonsense canon of *noscitur a sociis*"); *Jarecki v. G. D. Searle & Co.*, 367 U.S. 303, 307, 81 S. Ct. 1579, 1582, 6 L. Ed. 2d 859 (1961) ("The maxim *noscitur a sociis* . . . is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress.").

The case-by-case approach offers the lower courts an opportunity to examine each FOIA response to determine if it is an "administrative report or investigation" that reflects a "process of uncovering and analyzing information." Pet. App. 25a, n.6. Given the wide variety of agency response to FOIA requests, this approach avoids absurd results in many cases, such as the *Haight* case where the agency merely told the relator the location of the documents that she was seeking and did not produce any documents at all. 445 F.3d at 1155. Here, the Department of Labor told Mr. Kirk that Schindler's VETS-100 reports could not be *found*, which is not the same as a "report or investigation" concluding that the VETS-100 reports were not *filed*. Pet. App. 33a.

FOIA does not require the agency to issue any written response to a request for documents. The Act simply provides that "each agency, upon any request for records . . . shall make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A). An agency might respond to a FOIA request with a telephone call inviting the requestor to examine documents in the agency's reading room, *id.* § 552(a)(2), or it might copy the same documents and produce them without any cover letter or explanation. An overworked agency might notify a requestor that it does not have sufficient manpower to conduct a search and can only produce the documents that are readily at hand. Some of these responses might be characterized broadly as "administrative reports or investigations" and some may not, but the court's subject matter jurisdiction should not depend on the form of the agency's response. The case-by-case approach allows the court to look at the contents

of the documents disclosed under FOIA and not merely at the method chosen for their disclosure.

The categorical approach threatens to write the other "enumerated sources" out of the statute.[4] Any statement made by or to a government employee is an "administrative report or investigation" using the broadest dictionary definitions. Certainly an audit is a type of report, and a hearing is a type of investigation, so both words could be deleted without changing the meaning of the statute. It is "a cardinal principle of statutory construction" that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *Duncan v. Walker,* 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001) (internal quotation marks omitted); *Hibbs v. Winn*, 542 U.S. 88, 89, 124 S. Ct. 2276, 2279, 159 L. Ed. 2d 172 (2004) (same).

Moreover, this broad reading is not consistent with the widely accepted rule that the public disclosure bar is triggered only by a disclosure from one of the enumerated sources. Pet. App. 14a. *See, e.g., U.S. ex rel. Doe v. John Doe Corp.*, 960 F.2d 318, 323 (2d Cir. 1992) (Section 3730(e)(4) "furnishes an exclusive list of the ways in which a

[4] Schindler's misunderstanding on this point is clear in its discussion of the government possession standard. Schindler contends that "it is the public nature of the information, not the government's commencement of an investigation, which makes the information unsuitable as a basis for a *qui tam* action." Petition at 24-25. This construction of the statute leaves no role for the enumerated sources. In Schindler's view, if it is public, the information need not be disclosed in an audit, hearing, report or investigation. But that is not what the False Claims Act says.

public disclosure must occur for the jurisdictional bar to apply"). Congress clearly inserted the list in order to limit the public disclosure bar, not to expand it to every statement by or to a government employee. To implement that legislative intent, the Second Circuit properly observed that "the forms of public disclosure that trigger the jurisdictional bar are all forms that can reasonably be expected to indicate that some branch of government has turned its attention to the potential fraud in question, such as a hearing, audit, report, or investigation." Pet. App. 31a-32a.

When a government employee searches for documents and responds to a FOIA request, her work has nothing to do with allegations of fraud, and her response does not suggest that the government has looked at the allegations made by the *qui tam* relator. That is why FOIA responses are substantively different from the audits, hearings, reports and investigations described in the False Claims Act. The case-by-case approach of *Kirk* and *Haight* takes this difference into account and preserves the independent meaning of the other terms in the statute.

B. Schindler's Fear of FOIA is Unfounded

Schindler is afraid that, if the decision below is not reversed, "FOIA requests could be submitted to test compliance with a wide range of regulatory requirements potentially giving rise to FCA actions." Pet. 18. Only a government contractor would think that this use of FOIA is a problem; it seems close to the core purpose of the Act. The real issue is not whether FOIA will be used to

uncover crimes and fraud by contractors, but whether courts might unfairly impose False Claims Act liability on contractors under the case-by-case approach of *Haight* and *Kirk*. On this point, Schindler's argument is misguided.

First, Schindler conflates the likelihood that "any individual could file an FCA action" with an increased risk of liability. *See* Pet. 18. But the False Claims Act is a fraud statute, and liability is imposed only when the contractor knowingly presents a false claim for payment or "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim." 31 U.S.C. § 3729(a)(1). In the present case, it is not enough to allege "that the contractor's VETS-100 reports could not be located," as Schindler suggests. *See* Pet. 18. The whistleblower must allege, and prove, that the contractor knowingly misrepresented its compliance with VEVRAA or knowingly presented false VETS-100 reports. Based on his 25 years of experience at Schindler, Mr. Kirk has made those allegations in great detail.

Second, Schindler speculates that the *Haight* and *Kirk* decisions will somehow unfairly expand the application of the False Claims Act to contractors who fail to comply with VEVRAA. *See* Pet. 19-20. But Schindler fails to mention that Congress in 1998 adopted the Veterans Employment Opportunities Act, 31 U.S.C. § 1354, for exactly that reason. The Act makes compliance with VEVRAA a prerequisite for agency payments to contractors, and that nexus between compliance and payment is the trigger for liability under the False Claims Act. Pet. App. 7a, 44a. In other

words, Congress—not Mr. Kirk or the court below—decided to empower whistleblowers to use the "heavy artillery of the FCA." Pet. 20.

Finally, Schindler worries that unchecked whistleblowers might seek larger penalties than the government would impose in an administrative compliance proceeding. *Id.*[5] The False Claims Act protects contractors from any undue hardship by authorizing the Attorney General to intervene in any *qui tam* action and dismiss the complaint. 31 U.S.C. § 3730(c)(2). Alternatively, "the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty." 31 U.S.C. § 3730(c)(5). In short, even after a *qui tam* complaint is filed, the government has the option to seek lesser penalties when they are appropriate.

In sum, Schindler's fear that outsiders or "strangers" will use FOIA to bring expensive claims under the False Claims Act is unfounded. Pet. 25. Mr. Kirk is a genuine insider whose allegations are based on his personal knowledge of Schindler. As the Second Circuit held:

> [T]he facts of this case belie the assertion that individuals who are not original sources and who obtain information through FOIA requests will generally not be persons with firsthand knowledge of

[5] The other arguments raised by Schindler concern the holding below that the Amended Complaint properly states a claim under the FCA. *See* Petition at 19-21. Because that holding is not challenged in this Petition, those arguments are irrelevant and will not be addressed here.

> fraud but rather will be opportunistic litigators. The facts also illustrate how an overbroad reading of the jurisdictional bar would prevent an individual with independent but partial knowledge of a possible fraud would be barred from bringing a lawsuit that is neither parasitic nor frivolous.

Pet. App. 29a-30a. The Second Circuit properly concluded that Mr. Kirk's use of the Freedom of Information Act to substantiate his allegations did not strip the district court of its subject matter jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: New York, New York
August 19, 2010

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REPLY BRIEF

170

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No. 10-188

IN THE
Supreme Court of the United States

SCHINDLER ELEVATOR CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA *ex rel.* DANIEL KIRK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPLY BRIEF

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TABLE OF CONTENTS

Page

I. There Is an Acknowledged, True Conflict over Whether an Agency's Response to a FOIA Request Is a "Report" or "Investigation" 1

A. The Circuit Courts Are in Genuine, Irreconcilable Conflict 2

B. This Petition Concerns a Dispositive Element of The Public Disclosure Analysis, Which Formed The Basis of The Decision Below 4

II. The Question Presented Has Not Been Resolved by Statutory Amendment or by This Court's Decision in *Graham County* 5

A. Congress' Amendment of Other Statutory Terms, Not Involved in This Dispute, Has No Effect on the Issue Here 6

B. *Graham County* Did Not Resolve This Issue 8

C. There Are No Unresolved Factual Issues 9

III. The Second Circuit Incorrectly Interpreted the Public Disclosure Bar and Its Decision Will Have Significant and Unfortunate Consequences 10

Conclusion 12

TABLE OF CITED AUTHORITIES

Page

CASES

Cook County v. United States ex rel. Chandler,
538 U.S. 119 (2003) 5

Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson,
559 U.S. __, 130 S.Ct. 1396 (2010) 4, 6, 8, 9, 10

Rockwell Int'l Corp. v. United States,
549 U.S. 457 (2007) 5

United States ex rel. Duxbury v. Ortho Biotech Prods., 579 F.3d 13 (1st Cir. 2009) 6

United States ex rel. Haight v. Catholic Healthcare West,
445 F.3d 1147 (9th Cir. 2006) 3

United States ex rel. Mistick PBT v. Hous. Auth. of the City of Pittsburgh,
186 F.3d 376 (3d Cir. 1999) 1, 2, 3, 10

United States ex rel. Ondis v. City of Woonsocket,
587 F.3d 49 (1st Cir. 2009) 3, 7

United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.,
384 F.3d 168 (5th Cir. 2004) 2

Vt. Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765 (2000) 5

STATUTES

The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) 1, 6, 7, 8

TREATISES

Robert L. Stern et al., Supreme Court Practice (8th ed. 2002) 2

Respondent's 35-page Brief in Opposition does not dispel the simple truth that there is a direct, acknowledged split among five Courts of Appeals as to whether FOIA responses are "reports" or "investigations" within the meaning of the FCA's public disclosure bar. This issue is plainly important, as underscored by the *amicus curiae* briefs filed by the U.S. Chamber of Commerce (forthcoming) and the Equal Employment Advisory Council. Yet, despite the acknowledged conflict, Congress' recent amendment of the public disclosure provision[1] did nothing to clarify the issue. Only this Court's review can resolve the question—one that has already arisen in at least 25 (or, as Respondent views it, "only 25," Opp. at 20) separate cases, and will certainly arise again.[2]

I. There Is an Acknowledged, True Conflict over Whether an Agency's Response to a FOIA Request Is a "Report" or "Investigation"

Three Circuits have squarely held that an agency's response to a FOIA request, *by itself*, constitutes a "report" or "investigation" under the FCA. Two Circuits have squarely held the opposite—that a FOIA response, standing alone, is not a "report" or "investigation"—but allow for the possibility that documents turned over by an agency might qualify as "reports" or "investigations" for other reasons.

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[1] See The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 10104(j)(2), 124 Stat. 119, 901-02 (2010), reprinted at Pet. App. 105a-06a.

[2] Respondent argues that the Court should deny this Petition because it did not grant review when the Ninth Circuit first rejected *Mistick*. Opp. at 14-15. The difference is that now the issue has percolated, two more Circuits have weighed in, and the split has only widened.

These decisions are in "genuine conflict" because the "courts have decided the same legal issue in opposite ways." Robert L. Stern et al., *Supreme Court Practice* 226 (8th ed. 2002). And while Respondent asserts that this "'conflict' concerns *only one* small part of the [public disclosure] analysis," Opp. at 14 (emphasis added), this Court has never required petitioners to raise more than one certworthy issue to merit review.

A. The Circuit Courts Are in Genuine, Irreconcilable Conflict

Unlike Respondent, the Courts of Appeals themselves have not hesitated to acknowledge the conflict created by their decisions. See Pet. at 8 (citing cases). Indeed, in this very case, the court below explicitly stated that it was rejecting the "opposite conclusion" of its "sister Circuits."[3] Pet. App. 25a.

The Courts of Appeals have also clearly stated the basis of their disagreement. Under the majority rule first set forth in *Mistick*, the very act of responding to a FOIA request *independently* constitutes a "report" and "investigation," regardless of the character of the underlying documents.[4] The two Circuits

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[3] This was not the only time that the Second Circuit stated unequivocally that its decision was broadening an existing conflict. See Pet. App. 2a ("Our sister Circuits are divided on this issue."); *id.* at 17a ("Our sister Circuits have come to differing conclusions"); *id.* at 19a (adopting the Ninth Circuit's "different approach").

[4] See *United States ex rel. Mistick PBT v. Hous. Auth. of the City of Pittsburgh*, 186 F.3d 376, 383-84 (3d Cir. 1999) (Alito, J.) (explaining that a FOIA response entails both a "search" and "an official or formal statement" of the results) (citation omitted); *United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l*

in the minority flatly rejected this conclusion. Both expressly agreed with the *dissenting opinion* in *Mistick* that a FOIA response, standing alone, has no independent significance for purposes of the public disclosure bar.[5]

Respondent nonetheless claims that there is no "true conflict" because it is possible to find cases in which these two different rules of decision would "lead to the same result." Opp. at 16. Specifically, in a case where the First, Third, and Fifth Circuits would hold that the public disclosure bar is implicated *because of* an agency's FOIA response, the Second and Ninth Circuits, although rejecting that conclusion, might find that the bar is implicated for reasons having *nothing to do with FOIA*.[6]

But the test for a true conflict is not whether, under any conceivable facts, the Courts of Appeals

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Healthcare Sys., 384 F.3d 168, 176 (5th Cir. 2004) (same); *United States ex rel. Ondis v. City of Woonsocket*, 587 F.3d 49, 56 (1st Cir. 2009) ("the end product of the government's search . . . independently constitutes an administrative report").

[5] *United States ex rel. Haight v. Catholic Healthcare W.*, 445 F.3d 1147, 1153 (9th Cir. 2006) (describing FOIA as merely "a mechanism for duplicating records'") (quoting dissenting opinion in *Mistick*); Pet. App. 26a ("FOIA is simply a mechanism for granting the public access to information") (citing dissenting opinion in *Mistick*); cf. *Ondis*, 587 F.3d at 56 ("To cinch matters, the Ninth Circuit's interpretation fails to lend any independent significance to the act of responding to a FOIA request.").

[6] Respondent claims that the conflict between the Circuits is "nuanced," Opp. at 17, but he abandons any pretense of subtlety when attempting to defend the Second Circuit's ruling on the merits, claiming that *Mistick* "threatens to write" language out of the statute and is "not consistent" with "the widely accepted" understanding of the public disclosure bar, see *id.* at 31-32.

might agree; it is whether, under the facts of *this* case, it is certain that they would disagree. That test is indisputably met here. If the majority rule were applied to this exact case, then unquestionably the FOIA responses here would have been deemed "reports" and "investigations." The Second Circuit held exactly the opposite, and vacated the judgment in Schindler's favor solely on that ground.[7]

B. This Petition Concerns a Dispositive Element of The Public Disclosure Analysis, Which Formed The Basis of The Decision Below

Respondent attempts to recast this conflict as a "narrow disagreement" because "only one part of the public disclosure analysis" is in dispute. See Opp. at 18-21. But the mere fact that the public disclosure bar involves *other* elements, not at issue here, is no reason to let the Circuits remain in conflict as to the dispositive element in this case.

Under Respondent's approach, no case would be worthy of this Court's attention if it implicated a single element of a multi-part test, even if that element were outcome determinative. That clearly is not the case. Indeed, just last Term, the Court decided another single-issue case involving the public disclosure bar, *Graham County Soil & Water Conservation District v. United States ex rel. Wilson*,

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[7] Respondent incorrectly claims that the Petition rests on a "misleading" question presented. Opp. at 15. In fact, the question presented by Schindler is exactly the one about which the Circuits have disagreed: "Whether a *federal agency's response* to a [FOIA] request is a 'report . . . or investigation'." Pet. at i (emphasis added).

559 U.S. __, 130 S.Ct. 1396 (2010), deciding whether the term "administrative" encompassed disclosures made in state and local, or only federal, sources.[8]

II. The Question Presented Has Not Been Resolved by Statutory Amendment or by This Court's Decision in *Graham County*

Neither Congress nor this Court has resolved the question presented. While the recent amendment to the public disclosure bar resolved *other* issues that had divided the courts, it did nothing to clarify this issue. Instead, it left the disputed terms "report" and "investigation" completely unchanged. Congress' failure to act makes it *more*, not less, compelling that this Court grant review. Contrary to Respondent's contention, the Court's recent decision in *Graham County*, which never even mentioned this issue, will not provide the necessary guidance. If anything, *Graham County* should have precluded the Second Circuit's decision in this case. This Court *rejected* the application of the *noscitur a sociis* canon to the public disclosure bar, yet the Second Circuit expressly *relied upon* that canon here. This Court's review is needed and this case is the proper vehicle for that review.

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[8] Other FCA cases decided by this Court have similarly concerned single terms or elements of the statute. See *Rockwell Int'l Corp. v. United States*, 549 U.S. 457 (2007) (construing the FCA's "original source" exception); *Cook County v. United States ex rel. Chandler*, 538 U.S. 119 (2003) (holding that municipal corporations are "person[s]" subject to *qui tam* liability); *Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765 (2000) (holding that States are not "person[s]" subject to private FCA actions).

A. Congress' Amendment of Other Statutory Terms, Not Involved in This Dispute, Has No Effect on the Issue Here

1. The issue in conflict between the Circuits is how to interpret the statutory terms "report" and "investigation." See Pet. App. 24a ("we find that it strains the natural meaning of the statute to construe the terms 'report' and 'investigation' as broadly as some of our sister Circuits have done"). The Patient Protection and Affordable Care Act ("PPACA"), see *supra* n.1, which recently amended the public disclosure bar, left the disputed terms "report" and "investigation" completely unchanged. See Pet. App. 106a. Accordingly, while the PPACA resolved *other* issues about the public disclosure bar that had divided the courts,[9] it did not resolve this issue.

Respondent nevertheless claims that "future cases will not raise" the issue presented here because before enactment of the PPACA the bar applied to "*administrative* . . . report[s] . . . or investigation[s]," and after the PPACA it applies to "*Federal* report[s] . . . or investigation[s]." Pet. App. 103a, 106a (em-

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[9] In particular, the PPACA expressly resolved the question that was then pending before this Court in *Graham County*—whether the public disclosure bar applies to state and local sources or only federal ones. See *Graham County*, 130 S. Ct. at 1400. It also amended the "original source" provision of the public disclosure bar, resolving the issue as to when a relator must provide information to the government to qualify for the original-source exception to the bar, which also had divided the courts. See *United States ex rel. Duxbury v. Ortho Biotech Prods.*, 579 F.3d 13, 22 (1st Cir. 2009), *cert. denied*, __ U.S. __, 130 S. Ct. 3454 (2010) (noting three-way circuit split); Brief for the United States as Amicus Curiae, No. 09-654, at 10-14 (explaining how amendment resolved the split).

phasis added). What Respondent does not—and cannot—explain, however, is how the substitution of "Federal" for "administrative" could make the slightest difference to the question presented here.

FOIA applies exclusively to federal, administrative agencies. See Pet. at 14 n.9. Accordingly, prior to the PPACA, no court applying the public disclosure bar had any difficulty determining that FOIA responses are "administrative." As the First Circuit put it, "it cannot be gainsaid that responding to a FOIA request constitutes an administrative action. After all, the response originates with a *federal* agency . . . ." *Ondis*, 587 F.3d at 56 (emphasis added). For the same reason, after the PPACA, no court could doubt that FOIA responses are "Federal," since all such responses will still "originate[] with a federal agency." *Id.*

This merely shows that FOIA responses will satisfy a *different* criterion of the public disclosure bar than the one at issue here. It reveals nothing about whether such responses are "reports" or "investigations." Respondent argues that, because of the substitution of "Federal" for "administrative," "courts may well determine that the new statute puts less emphasis on the *type* of report or investigation . . . and more emphasis on the *content*." Opp. at 23 (emphasis added). But "Federal"—like "administrative"—has nothing to do with the content of a report and goes only to its source. In any event, before "emphasi[zing] . . . the content of the report," *id.*, courts must first determine whether they are dealing with a "report" at all—and that is the question that has split the Circuits.

2. Respondent also claims that this issue has been superseded by the PPACA's amendment of a separate provision of the statute to provide that the public disclosure bar applies only if "substantially the same allegations or transactions" as contained in the *qui tam* complaint are publicly disclosed. Opp. at 23-24. As with the substitution of "Federal" for "administrative," this change concerns a *different* element of the public disclosure bar. It has no bearing on whether a FOIA response is a "report" or "investigation."

The new statutory language does not appear to change significantly the pre-PPACA requirements for applying the bar, which included that the public disclosure "must be of the material elements of the 'allegations or transactions' on which the claims is based." Pet. App. 14a (cited at Opp. at 11). But whatever the significance of this change, it affects a different element of the bar from the one raised here. Courts applying the revised statute will still have to decide whether a FOIA response is a "report" or "investigation" to determine whether the public disclosure bar applies.

B. *Graham County* Did Not Resolve This Issue

In its recent *Graham County* decision, the Court determined that the (now superseded) term "administrative" in the public disclosure bar applied to state and local, as well as federal, sources. *Graham County* never addressed what constitutes a "report" or "investigation" or whether FOIA responses fit within those categories.

Respondent nonetheless claims that "the purported conflict is likely to disappear" because "*Graham County* provides new instructions for construing the public disclosure bar." Opp. at 25. But to the extent relevant at all, *Graham County* undercuts the Second Circuit's subsequent decision here. The Second Circuit relied on the interpretive canon *noscitur a sociis*—that "a word may be known by the company it keeps"—to "narrow" the public disclosure bar's "potentially broad terms." Pet. App. 23a. In *Graham County*, however, this Court found the use of the *noscitur a sociis* canon to be "unpersuasive" in construing the public disclosure bar. 130 S. Ct. at 1403.

Because *Graham County* vitiates, rather than supports, the Second Circuit's reasoning, it will not lead other courts to uniformly adopt that court's view that FOIA responses are not "reports" or "investigations." And because the Second Circuit reached this conclusion after *Graham County* was decided, this Court's review is needed to ensure the uniformity of federal law.

C. There Are No Unresolved Factual Issues

The "unresolved factual questions" that Respondent claims should preclude review are neither "factual questions" nor "unresolved." They are simply the *other* elements of the public disclosure bar, which are not presented for review here. See Opp. at 25-28. The district court determined that all of those elements were satisfied when dismissing the Complaint at the pleadings stage (hence, they are not "factual questions"), and the Second Circuit did not

disturb those rulings (hence, they are not "unresolved").[10] Pet. App. 33a n.10.

III. The Second Circuit Incorrectly Interpreted the Public Disclosure Bar and Its Decision Will Have Significant and Unfortunate Consequences

Then-Judge Alito's opinion in *Mistick* demonstrated why FOIA responses are "reports" and "investigations." Respondent's defense of the opposite view is no match for that analysis, and fails to grapple with other mistakes in the Second Circuit's reasoning, *see* Pet. at 21-25.

Respondent contends that "[o]nly a government contractor" might be concerned that relators with no independent knowledge would use FOIA to enforce regulatory requirements through the FCA. But it was Congress, not contractors, that tried to restrict the FCA's extraordinary financial rewards to persons with firsthand knowledge of fraud. The Second Circuit has now removed that limitation.

The consequences of this decision are serious, even more so for companies—like Schindler—that have engaged in no wrongdoing. Respondent's allegations of affirmative action violations, which he repeats here, were rejected by the Department of Labor on the merits, rejected again upon administrative appeal, and, for other reasons, permanently dismissed from this lawsuit. And while Respondent continues to allege that Schindler "lacked any infor-

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[10] That the Second Circuit may need to reach these issues on remand if the Court reverses is no basis to deny review. See, e.g., *Graham County*, 130 S. Ct. at 1411 (remanding for further proceedings).

mation" about veterans on which to base the VETS-100 reports found by the DOL for 2004-2006, Opp. at 7, the administrative appeal decision quotes the portion of Schindler's 2004 affirmative action policy "invit[ing] [veterans] voluntarily to self-identify." Ltr. from U.S. Dep't of Labor to Daniel Kirk, Nov. 24, 2009, at 8. Perhaps most importantly, it is undisputed that Schindler consistently provided quality goods and services to the government for a fair price.

Yet Schindler now faces this $300 million lawsuit for alleged VEVRAA violations, which has already caused the company substantial expense and inconvenience. Despite Respondent's claim that Congress intended the use of the FCA to enforce VEVRAA, Opp. at 33-34, the government itself has apparently never used the FCA for that purpose. Nevertheless, under the Second Circuit's ruling, Respondent's suit may now proceed. This Court should grant review and then reverse the court below to ensure the uniformity of federal decisions and to restore to the public disclosure bar the effect that Congress intended.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari to the Second Circuit.

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August 31, 2010

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Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 6

ARGUMENT 7

I. THE CIRCUITS ARE DEEPLY SPLIT ON THE QUESTION WHETHER INFORMATION THE GOVERNMENT PUBLICLY DISCLOSES UNDER FOIA CONSTITUTES A "PUBLIC DISCLOSURE" UNDER THE FCA 7

II. THE ISSUE IS IMPORTANT AND WARRANTS REVIEW 15

CONCLUSION 19

TABLE OF AUTHORITIES

Page

CASES:

Allison Engine Co., Inc. v. *United States ex rel. Sanders*, 553 U.S. 662 (2008) 2

Consumer Product Safety Comm'n v. *GTE Sylvania, Inc.*, 447 U.S. 102 (1980) 10

Ebeid ex rel. United States v. *Lungwitz*, -- F.3d --, 2010 WL 3092637 (9th Cir. Aug. 9, 2010) 16

Graham County Soil & Water Conservation Dist. v. *United States ex rel. Wilson*, -- U.S. --, 130 S. Ct. 1396 (2010) 2, 6, 12, 14

Hughes Aircraft Co. v. *United States ex rel. Schumer*, 520 U.S. 939 (1997) 4

In re Nat. Gas Royalties Qui Tam Litig., 566 F.3d 956 (10th Cir. 2009) 6

Rockwell Int'l Corp. v. *United States*, 549 U.S. 457 (2007) 2, 6, 7

United States Dep't of Justice v. *Reporters Comm.*, 489 U.S. 749 (1989) 10

United States ex rel. Bondy v. *Consumer Health Found.*, 28 F. App'x 178 (4th Cir. 2001) 12

United States ex rel. Branahn v. *Mercy Health Sys. of S.W. Ohio*, 188 F.3d 510, 1999 WL 618018 (6th Cir. 1999) 11

TABLE OF AUTHORITIES—Continued

Page

United States ex rel. Grynberg v. *Praxair, Inc.*, 389 F.3d 1038 (10th Cir. 2004) 11

United States ex rel. Haight v. *Catholic Healthcare First*, 445 F.3d 1147 (9th Cir. 2006) 12

United States ex rel. Hendow v. *University of Phoenix*, 461 F.3d 1166 (9th Cir. 2006) 17

United States ex rel. Lopez v. *Strayer Educ., Inc.*, 698 F. Supp. 2d 633 (E.D. Va. 2010) 5

United States ex rel. McKenzie v. *BellSouth Telecomm., Inc.*, 123 F.3d 935 (6th Cir. 1997) 17

United States ex rel. Mistick v. *Housing Auth. of City of Pittsburgh*, 186 F.3d 376 (3d Cir. 1999) 10, 11

United States ex rel. Ondis v. *City of Woonsocket*, 587 F.3d 49 (1st Cir. 2009) 11

United States ex rel. Reagan v. *East Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168 (5th Cir. 2004) 11

United States ex rel. Stinson, Lyons, Gerlin & Bustamante, PA v. *Prudential Ins. Co.*, 944 F.2d 1149 (3d Cir. 1991) 11

Vermont Agency of Natural Res. v. *United States ex rel. Stevens*, 529 U.S. 765 (2000) 2, 3, 4

TABLE OF AUTHORITIES—Continued

Page

Wang v. *FMC Corp.*,
975 F.2d 1412 (9th Cir. 1992) 17

STATUTES:

5 U.S.C. § 552(a) 10

5 U.S.C. § 552(a)(3)(C) 8

5 U.S.C. § 552(a)(3)(D) 8

15 U.S.C. § 2055(b)(1) 10

31 U.S.C. § 1354(a)(1) 15

31 U.S.C. § 3729(a) 3

31 U.S.C. § 3729(a)(1) 3

31 U.S.C. § 3729(b)(1) 3

31 U.S.C. § 3730(d)(1) 3

31 U.S.C. § 3730(d)(2) 3

31 U.S.C. § 3730(e)(4) 2, 7, 8, 11

31 U.S.C. § 3732(a) 15

38 U.S.C § 4212(b) 15

Patient Protection and Affordable Care Act,
Pub. L. No. 111-148 (2010) 8

TABLE OF AUTHORITIES—Continued

Page

RULES:

Sup. Ct. Rule 37.2(a) 1

Sup. Ct. R. 37.6 1

REGULATIONS:

28 C.F.R. § 85.3(a)(9) 3

48 C.F.R. § 52.222-38 16

OTHER AUTHORITIES:

Department of Justice, Office of Legal Counsel, *Constitutionality of the Qui Tam Provisions of the False Claims Act*, 13 U.S. Op. Off. Legal Counsel 207 (1989) 4, 18

Carolyn V. Metnick, *The Jurisdictional Bar Provision: Who is an Appropriate Relator?*, 17 Annals Health L. 101 (Winter 2008) 15

United States Dep't of Justice, Civil Division, *Fraud Statistics—Overview, Oct. 1, 1987-Sept. 30, 2009, available at* http://www.justice.gov/civil/frauds/fcastats.html 3, 4

IN THE

Supreme Court of the United States

No. 10-188

SCHINDLER ELEVATOR CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA EX REL. DANIEL KIRK,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF AMICUS CURIAE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONER

STATEMENT OF INTEREST OF AMICUS CURIAE[1]

[1] Pursuant to Sup. Ct. R. 37.2(a), *amicus curiae* states that counsel of record for all parties received timely notice of its intention to file an *amicus curiae* brief with the Court. Petitioner has consented to the filing of this brief through a blanket consent letter filed with the Clerk. Respondent has consented through a consent letter filed with the Clerk. Pursuant to Sup. Ct. R. 37.6, *amicus curiae* notes that no counsel for a party authored the brief in whole or in part; no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than *amicus curiae*, its members, or its counsel, made such a monetary contribution.

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million businesses and organizations of every size, in every sector, and from every region of the country. The Chamber actively represents the interests of its members in court on issues of widespread concern to the business community. The Chamber has participated as *amicus curiae* in numerous cases before the Court, including many cases involving the proper interpretation of the False Claims Act ("FCA"). *See, e.g.*, *Graham County Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, -- U.S. --, 130 S. Ct. 1396 (2010) (*amicus* brief at petition and merits stages); *Rockwell Int'l Corp.* v. *United States*, 549 U.S. 457 (2007) (same); *Allison Engine Co., Inc.* v. *United States ex rel. Sanders*, 553 U.S. 662 (2008) (same); *Vermont Agency of Natural Res.* v. *United States ex rel. Stevens*, 529 U.S. 765 (2000) (*amicus* brief at petition stage).

This case concerns the scope of the FCA's "public disclosure bar"—a provision that operates as a critical limitation on the reach of the Act's *qui tam* provisions. 31 U.S.C. § 3730(e)(4). A Second Circuit panel ruled below that a *qui tam* action based on information the relator obtained from the government pursuant to a Freedom of Information Act ("FOIA") request was not precluded by the FCA's public disclosure bar. The panel's ruling threatens to substantially expand the field of *qui tam* actions, will worsen abuse and misuse of the *qui tam* provisions, and is wrong on the merits.

The FCA provides a cause of action for a *qui tam* relator against any person who, among other things, submits "false claims" for payment to the government or "false statements" material to a false claim. 31 U.S.C. § 3729(a)(1). In asserting a FCA cause of action for a "false claim" or "false statement," a relator need not prove (or even allege) that the defendant had a specific intent to defraud the government. Merely alleging reckless disregard is sufficient. *Id.* § 3729(b)(1). Yet despite the lack of a specific intent requirement, the FCA "imposes damages that are essentially punitive in nature." *Vermont Agency of Natural Res.*, 529 U.S. at 784. A defendant faces treble damages and penalties of $5,500-$11,000 per false claim, along with attorneys' fees and costs. 31 U.S.C. § 3729(a); 28 C.F.R. § 85.3(a)(9). And a relator is entitled to a bounty for bringing a suit that results in recovery. If the United States intervenes and pursues the action, the relator gets paid 15 to 25 percent of any recovery, in addition to attorneys' fees and costs; if the United States declines to intervene in the case, a relator who nonetheless pursues it and secures a judgment gets paid up to 30 percent of any recovery, in addition to attorneys' fees and costs. 31 U.S.C. § 3730(d)(1)-(2).

The FCA's relaxed intent standard, harsh treble and per-claim damages specifications, and fee-shifting provision have combined to produce an expansive cottage industry of bounty-seeking relators. *Qui tam* lawsuits have ballooned in the past two decades; thirty such lawsuits were filed in 1987, and over *four hundred* were filed in 2009. *See* United States Dep't of Justice, Civil Division, *Fraud Statistics—Overview, Oct. 1, 1987-Sept. 30, 2009*,

available *at* http://www.justice.gov/civil/frauds/fcastats.html.

Even as the number of *qui tam* filings has swelled, the United States government—after investigating the allegations—declines to pursue more than two-thirds of those lawsuits—about the same percentage it always has, despite the vast expansion of the *qui tam* docket. But the relators press on in many such declined actions, motivated by the statute's bounty provision and unconstrained by the institutional wisdom that tempers the zeal of federal prosecutors. *Vermont Agency of Natural Res.*, 529 U.S. at 784; *cf. Hughes Aircraft Co.* v. *United States ex rel. Schumer*, 520 U.S. 939, 949 (1997) ("*Qui tam* relators are * * * less likely than is the Government to forgo an action arguably based on a mere technical noncompliance with reporting requirements that involved no harm to the public fisc."); Department of Justice, Office of Legal Counsel, *Constitutionality of the Qui Tam Provisions of the False Claims Act*, 13 U.S. Op. Off. Legal Counsel 207, 220 (1989) ("Relators who have no interest in the smooth execution of the government's work have a strong dollar stake in alleging fraud whether or not it exists.").

Defending declined *qui tam* lawsuits exposes the Chamber's members to immense costs and burdens, even when those cases are ultimately found to lack merit. And the vast majority of declined cases fall into that category: Over the past twenty-two years, only *three percent* of the amounts recovered for the United States have been awarded in cases that the United States government declined to pursue. *See* United States Dep't of Justice, Civil Division, *Fraud Statistics—Overview, Oct. 1, 1987-Sept. 30, 2009,*

supra (calculated by dividing the total recovery in declined *qui tam* cases by the total recovery in all *qui tam* cases).

The potential for lucrative awards has resulted not only in a cottage industry of relators; it has produced a *de facto* "relator's bar" of attorneys in regular pursuit of *qui tam* plaintiffs. *See, e.g., United States ex rel. Lopez* v. *Strayer Educ., Inc.*, 698 F. Supp. 2d 633, 641-644 (E.D. Va. 2010) (describing attorney's recruitment of disgruntled former employees to file *qui tam* suits). The Second Circuit's decision is a gift to that bar. Under the panel's guidance, *qui tam* plaintiffs' lawyers in that circuit no longer need to limit themselves to trolling for unhappy company employees to serve as relators; they can expand their search to include anyone willing to submit a FOIA request to serve in that role.

The Second Circuit is the seventh federal circuit to weigh in on the propriety of leveraging a FOIA request into a FCA claim. The panel's decision exacerbates the circuits' now 4-3 divide over whether the FCA's public disclosure bar applies where a *qui tam* complaint is based not on first-hand knowledge, but on information the government discloses in response to a FOIA request. This circuit split is of great concern to the Chamber. As a principal voice of the American business community, the Chamber is charged with ensuring that federal laws affecting the business community—like the FCA—are interpreted and applied fairly and consistently throughout the nation's lower courts. Federal funding pervades almost every sector of the Nation's economy and businesses. The proliferation of vexatious or otherwise non-meritorious *qui tam*

actions looms over every federal government contractor, subcontractor, and grant recipient—particularly as more and more relators file suit seeking to leverage honest mistakes, alleged violations of ambiguous statutes or regulations, or conflicting agency guidance into a lucrative FCA cause of action. The Second Circuit's errant ruling will only worsen this burgeoning trend. It should be reviewed and reversed.

SUMMARY OF ARGUMENT

The issues raised in this case involve the scope of the FCA's public disclosure bar—a fundamental constraint on a relator's pursuit of a *qui tam* claim and the monetary windfall that may accompany it. The Act's public disclosure bar ensures that only true whistleblowers can pursue a *qui tam* suit. *See In re Nat. Gas Royalties Qui Tam Litig.*, 566 F.3d 956, 961 (10th Cir. 2009) ("The public disclosure bar is * * * chiefly designed to separate the opportunistic relator from the relator who has genuine, useful information that the government lacks."). How and when that bar applies is one of the most frequently litigated issues in FCA cases. In the last few years, the Court has twice addressed that provision. *See Rockwell Int'l Corp.*, 549 U.S. at 468; *Graham County*, 130 S. Ct. at 1410. This case presents a natural, and necessary, follow-on to those decisions.

The Second Circuit's decision substantially waters down the public disclosure bar. Instead of interpreting the provision to further the statutory goal of ensuring that only true whistleblowers are deputized to pursue FCA actions on behalf of the United States—as the First, Third, Fifth, and Tenth

Circuits have—the Second Circuit held that a relator can rely on information disclosed to the public in response to a FOIA request. The Ninth and Fourth Circuits have offered similar interpretations as the Second Circuit. According to the Fourth, Ninth, and now the Second Circuit, someone with no first-hand knowledge of fraud, but who merely has obtained publicly available information from the government's *own records*, can be deputized under the FCA's public disclosure bar to litigate a false claims action on behalf of the United States--and assert a right to tens of millions of dollars for doing so, as occurred in this case. The Court should review, and reverse, the decision below.

ARGUMENT

I. THE CIRCUITS ARE DEEPLY SPLIT ON THE QUESTION WHETHER INFORMATION THE GOVERNMENT PUBLICLY DISCLOSES UNDER FOIA CONSTITUTES A "PUBLIC DISCLOSURE" UNDER THE FCA.

1. The FCA generally bars *qui tam* claims based on publicly disclosed information. *Rockwell Int'l*, 549 U.S. at 467 (discussing "original source" exception to bar). Since 1986, the FCA's public disclosure bar has barred suits based on publicly disclosed "reports" and "investigations" from federal administrative agencies. Until earlier this year, the statute used the descriptor "administrative" and stated that a relator's allegations of false claims "based upon the public disclosure of allegations or transactions * * * in a[n] * * * administrative * * * report * * * or investigation" were barred. 31 U.S.C. § 3739(e)(4) (2009).

As amended in the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), the FCA now uses the descriptor "federal"—but continues to generally bar relator's allegations of false claims that have been "publicly disclosed * * * in a * * * Federal report * * * or investigation." 31 U.S.C. § 3730(e)(4) (2010), as amended by Pub. L. No. 111-148, § 10104(j)(2). Because a federal agency's action in response to a FOIA request is both "administrative" and "federal," the change in the descriptor has no bearing on the pure question of law in this case.[2]

2. Relator Daniel Kirk's wife submitted on his behalf several FOIA requests to the Department of Labor asking for copies of reports known as "VETS-100" reports that Schindler submitted in various years. Under FOIA, the Department of Labor was required "to search for the records" by "review[ing]" agency records to locate responsive materials. 5 U.S.C. § 552(a)(3)(C), (D). The FOIA requests "were handled by the Chief of the Investigation and Compliance Division within the DOL's Office of Veteran's Employment and Training, who, in his own words, conducted a 'search,' made a 'determination' and produced, on official stationary, a document

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[2] Kirk's Brief in Opposition wrings as much mileage as possible, and then some, out of the recent change in statutory language. But Kirk does not and cannot dispute that "reports" or "investigations" issuing from federal administrative agencies were *and remain* subject to the public disclosure bar. There thus has been no change to the statute that matters in resolving the pure question of law the petition presents: Whether a federal agency's "investigation" into material responsive to a FOIA request and "report[ing]" of that material to the requester constitutes a public disclosure. 31 U.S.C. § 3739(e)(4) (2009 & 2010).

setting forth the results of his inquiry." Pet. App. 82a.

Based "in large part" on the Department of Labor's searching of its records and public disclosure of materials in response to the FOIA requests, Kirk filed a *qui tam* action alleging that Schindler violated the FCA obtaining government contracts in years when the company either had not submitted a report or had submitted an inaccurate one. Pet. App. 2a. Kirk made no allegation of any failure to provide the goods and services for which Schindler contracted with the United States. He nonetheless sought over $300 million dollars in treble damages, as well as per-claim civil penalties and attorneys' fees and costs. Pet. 5.

3. The Second Circuit specifically acknowledged that its "sister Circuits are divided on this issue." Joining two other circuits, the court of appeals held that the fact that a relator like Kirk based his *qui tam* action on materials publicly disclosed by the government in response to a FOIA request does not trigger the FCA's public disclosure bar. Pet. App. 2a-3a. Instead, in the court's view, the inquiry under the FCA is whether each of the records disclosed by the government would independently qualify as a public disclosure, such as by being a congressional report. Pet. App. 3a, 33a. Both the courts below and the petition have detailed the protracted seven-circuit split on this specific question: whether the government's public disclosure of information after searching its records in response to a FOIA request triggers the FCA's public disclosure bar. Pet. 10-13; Pet. App. 15a-26a, 79a-84a.

To briefly review the bidding: In *United States ex rel. Mistick* v. *Housing Authority of City of Pittsburgh*, 186 F.3d 376 (3d Cir. 1999), the court held that "the disclosure of information in response to a FOIA request is a 'public disclosure' "—a conclusion the court based on FOIA's directive that " '[e]ach agency shall make available *to the public*' certain specified categories of information," as well as FOIA's " 'central purpose' " of "ensur[ing] that government activities are 'opened to the sharp eye of *public* scrutiny.' " *Id.* at 383 (quoting 5 U.S.C. § 552(a) and *United States Dep't of Justice* v. *Reporters Comm.*, 489 U.S. 749, 774 (1989)) (emphasis in *Mistick*). The Third Circuit also focused on this Court's conclusion in *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 447 U.S. 102 (1980) that the disclosure of information pursuant to FOIA constitutes a "public disclosure" within the meaning of the Consumer Product Safety Act, 15 U.S.C. § 2055(b)(1). 186 F.3d at 383. In that case, the Court held:

> [A]s a matter of common usage the term "public" is properly understood as including persons who are FOIA requesters. A disclosure pursuant to the FOIA would thus seem to be most accurately characterized as a "public disclosure" within the plain meaning of [the Consumer Product Safety Act].

GTE Sylvania, 447 U.S. at 108-109.[3] As the Third Circuit explained, there is "no sound basis for

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[3] Citing *GTE Sylvania*, the District Court explained that "[f]inding that the DOL's response to the Kirks' requests publicly disclosed the information in question, therefore, is consistent not only with this Circuit's FCA precedent, but also

construing the term 'public disclosure' any more narrowly [in the FCA] than the Supreme Court did in *GTE Sylvania*." 186 F.3d at 383.

Mistick is consistent with the Third Circuit's general recognition that the public disclosure bar operates to preclude *qui tam* suits "based on information that would have been equally available to strangers to the fraud transaction had they chosen to look for it as it was to the relator"—which certainly includes *qui tam* suits based on information obtained by a member of the public through a FOIA request. *United States ex rel. Stinson, Lyons, Gerlin & Bustamante, PA* v. *Prudential Ins. Co.*, 944 F.2d 1149, 1155-56 (3d Cir. 1991).

The Fifth Circuit expressly adopted the Third Circuit's reasoning. *See United States ex rel. Reagan* v. *East Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168, 176 (5th Cir. 2004). It reasoned that an agency's response to a FOIA request is a "report" under 31 U.S.C. § 3730(e)(4) because the response is "official government action" that "provides information and notification regarding the results of the agency's search for the requested documents." *Id.* (citing *Mistick*, 186 F.3d at 383). The First and Tenth Circuits have reached the same conclusion. *United States ex rel. Ondis* v. *City of Woonsocket*, 587 F.3d 49 (1st Cir. 2009); *United States ex rel. Grynberg* v. *Praxair, Inc.*, 389 F.3d 1038, 1049 (10th Cir. 2004). *See also United States ex rel. Branahn* v. *Mercy Health Sys. of S.W. Ohio*, 188 F.3d 510, 1999 WL 618018 (6th Cir. 1999) (recognizing that

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with both the statutory language and the Supreme Court's understanding of the purpose behind the FOIA." Pet. App. 77a.

information is "publicly disclosed" under the FCA so long as it is "available to anyone who request[s] it").

On the other side, two circuits previously had weighed in with the view that an agency's response to a FOIA request is not an "investigation" or "report" under the public disclosure bar. *See United States ex rel. Haight* v. *Catholic Healthcare First*, 445 F.3d 1147, 1153 (9th Cir. 2006) (concluding that a response to a FOIA request is neither a "report" nor an "investigation" under the public disclosure bar because it does not include "an analysis of its findings" or "independent governmental leg-work"); *United States ex rel. Bondy* v. *Consumer Health Found.*, 28 F. App'x 178, 181 n.2 (4th Cir. 2001) (concluding that FOIA information does not trigger the public disclosure bar).

4. The Second Circuit's decision deepened that circuit split. After canvassing the divergent views of its sister circuits, the court of appeals held that the disclosure of information to a member of the public in answering a FOIA request does not trigger the public disclosure. To reach that conclusion, the court read the term "report" as including *only* a "compilation or analysis of information with the aim of synthesizing that information to serve some end of the government" and the term "investigation" as including only "sustained inquir[ies] directed toward a government end." Pet. App. 24a. Nothing in the statute, however, supports such a narrow reading of these terms. *See Graham County*, 130 S. Ct. at 1405, 1410 (rejecting proposed limitation on term in public disclosure bar that failed to account for the fact that it is the "public disclosure" itself that is the "touchstone" of the bar, which is why disclosures

even on a local television news program trigger the bar); *see also* Pet. App. 82a (District Court explaining that "the Oxford English Dictionary defines an 'investigation' as the 'making of a search or inquiry' and a 'report' as 'a formal statement of the results of an investigation' ").

The Second Circuit's cramped reading of the public disclosure bar is sharply at odds with the majority view of the other courts of appeals. The circuits on the majority side of the split construe "reports" and "investigations" by their plain meaning as including an agency's investigation of responsive material and reporting of those findings to a FOIA requester. Here, for example, the Department of Labor Chief of Investigation and Compliance within the Department's Office of Veteran Employment and Training "conducted a search and prepared a letter detailing that search and its results, a work process that produced a substantive government work product"—something Kirk did not dispute in the District Court. Pet. App. 83a-84a. As the District Court recognized, the mere fact that "the investigation and the resulting report may not have been lengthy does not obscure the fact that an administrative body conducted an investigation and produced a report disclosing to members of the public the critical elements of Kirk's claims." Pet. App. 84a.

In its opinion, the Second Circuit relied on the interpretation of the public disclosure bar urged by the United States—that the bar should only be triggered where the public disclosure "demonstrat[es] that the government is either actively investigating the alleged fraud or there is sufficient public awareness of the allegations to

pressure the government to start an investigation." Pet. App. 30a (quoting Brief for Amicus Curiae United States of America). But this Court rejected a nearly identical argument made by the relator and the United States in *Graham County*. There, in addressing whether state and local reports were public disclosures, the relator and the United States argued that these reports might not come to the attention of federal prosecutors. The Court pointed out that the focus of the statutory standard is whether a public disclosure *occurred*, not "whether [the reports] have landed on the desk of a DOJ lawyer." *Graham County*, 130 S. Ct. at 1410. So too here. It is the public nature of the information provided by the government—and equally available to anyone who asks to see it—that implicates the public disclosure bar, not what the government is doing or has done with that information.

5. The lower federal courts plainly need guidance on the interaction between FOIA and the FCA. For as matters exist now, the ability of a relator to impose the substantial costs and burdens of a *qui tam* action on businesses and courts alike turns on where that suit is filed. A New York district court will be constrained to follow *Kirk* and tolerate an action predicated on a FOIA fishing expedition, while a New Jersey district court will cite *Mistick* and dismiss the same action. In Arizona, a similar filing would survive dismissal, but not next door in New Mexico. North Carolina district courts would tolerate a FOIA-based FCA action; Texas courts would not. This sharp disparity of outcomes across circuits is especially problematic under the FCA, given a potential relator's unusual ability to broadly forum-shop for the best circuit's law in which to

bring a claim. *See* 31 U.S.C. § 3732(a); *see, e.g.*, Carolyn V. Metnick, *The Jurisdictional Bar Provision: Who is an Appropriate Relator?*, 17 Annals Health L. 101, 103 (Winter 2008) (specifically advocating that relators engage in forum shopping based on varying interpretations of the public disclosure bar).

II. THE ISSUE IS IMPORTANT AND WARRANTS REVIEW.

1. The growing practice of basing a *qui tam* action on information publicly disclosed through FOIA is especially concerning to the Chamber and its members given the rise in *qui tam* actions based on so-called "false certification" theories like the one presented in this case. Relators in such cases assert that even where the government receives the goods or service for which it paid, some other legal technicality, like non-compliance with a condition of participation or payment, can transform a claim into a "legally false" claim despite the fact that the government received exactly the goods or services that it sought.

In this case, for example, Kirk did not allege that Schindler had filed claims for, but had failed to perform, the work for which it had contracted—servicing elevators and escalators for the federal government. Instead, Kirk alleged that Schindler's claims for payment were "false" because a statute dictates that an agency may not enter a contract covered by the Vietnam Era Veterans Readjustment Assistance Act ("VEVRAA") when the contractor has not submitted a VETS-100 report, a regulation says that that an offeror subject to VEVRAA's reporting requirements represents in submitting an offer that

"it has submitted the most recent VETS-100 report required of that [Act]," and Schindler had not submitted an accurate VETS-100 reports in certain years. 31 U.S.C. § 1354(a)(1); 48 C.F.R. § 52.222-38; Pet. App. 41a, 58a-59a.

VEVRAA, like numerous statutes, provides a specific administrative mechanism for dealing with noncompliance. 38 U.S.C § 4212(b) (providing that a veteran who "believes any [federal] contractor * * * has failed to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor"). Kirk availed himself of that very procedure: "On April 15, 2004, Kirk filed a complaint with the Secretary of Labor, the DOL's Office of Federal Contract Compliance Programs conducted an investigation, [and] the investigation resulted in an official report finding no evidence of non-compliance[.]" Pet. App. 69a.

But in addition to pursuing VEVRAA's specified administrative remedy, Kirk also went for the bounty, alleging in a *qui tam* suit that Schindler's purported noncompliance with the VETS-100 regulation meant that every dollar in payment sought by Schindler for its later work was a "legally false" claim because Schindler had not submitted an accurate VETS-100 report. *See* Pet. App. 39a-41a, 62a-68a (discussing the FCA false certification theory and the distinction between factually and legally false claims); *see also, e.g., Ebeid ex rel. United States* v. *Lungwitz*, -- F.3d --, 2010 WL 3092637, at *2-*3 (9th Cir. Aug. 9, 2010) (following Second, Sixth, Tenth, and Eleventh Circuits in

recognizing implied false certification theory and holding that "[i]mplied false certification occurs when an entity has previously undertaken to expressly comply with a law, rule, or regulation, and that obligation is implicated by submitting a claim for payment even though a certification of compliance is not required in the process of submitting the claim"); *United States ex rel. Hendow* v. *University of Phoenix*, 461 F.3d 1166, 1169 (9th Cir. 2006) (allowing relator's suit based on alleged non-compliance with a condition of participation in student loan program even though Department of Education treated alleged noncompliance of condition as an administrative enforcement matter, not fraud).

Implied and express "false certification" theories have become the theories *du jour* of the relator's bar. And when coupled with the Second Circuit's broad tolerance of *qui tam* actions predicated on FOIA disclosures, that combination is guaranteed to foster further abuse of the FCA. The FCA's objective is to enlist those with knowledge of fraud to help the government ferret it out, not to arm citizens with a heavy statutory weapon to challenge every alleged instance of minimal regulatory noncompliance. Where a relator has no knowledge of wrongdoing or fraud, but instead bases a FCA action on publicly available FOIA materials, the relator is simply not the true whistleblower that the FCA is intended to foster and encourage. *See, e.g., Wang* v. *FMC Corp.*, 975 F.2d 1412, 1419 (9th Cir. 1992) ("*Qui tam* suits are meant to encourage insiders privy to a fraud on the government to blow the whistle on the crime."); *United States ex rel. McKenzie* v. *BellSouth Telecomm., Inc.*, 123 F.3d 935, 942 (6th Cir. 1997) (a

"true whistleblower" alerts the government to an alleged fraud "before such information is in the public domain"). The FCA was never meant to encourage citizens to go hunting through the government's *own files* looking for minor reporting violations that, regardless of applicable administrative enforcement mechanisms, the relator can prosecute for a bounty as a FCA action.

By permitting Kirk's bounty-hunting *qui tam* suit to proceed after his administrative complaint had been filed, addressed, and resolved against him, the Second Circuit both circumvented the appropriate administrative mechanisms and second-guessed the agency's determination. As the Office of Legal Counsel explained over twenty years ago, the contracting agency should decide whether a deviation constitutes a breach and whether a breach amounts to fraud—taking care "to avoid excessive concern over minor failings that might threaten a useful course of dealing with the other party" and considering whether "the contractor's performance otherwise has been adequate or even excellent." Office of Legal Counsel, *Constitutionality of the Qui Tam Provisions of the False Claims Act*, 13 U.S. Op. Off. Legal Counsel at 220. Relators have no such tempering influences; their strategy is recovery-or-bust, as they only reap the financial reward (and attorneys' fees) if they can obtain a judgment or settlement based on allegations of technical noncompliance. There is no basis in law or logic for using FOIA materials from the government to purse a FCA action that displaces the normal agency compliance and enforcement mechanisms.

3. The limitation on relators imposed by the public disclosure bar is vital to American business. As Kirk's FOIA request demonstrates, relators and the relators' bar are engaged in a relentless drive to stretch the statute's *qui tam* provisions into a private, and punitive, enforcement mechanism for other statutes—like VEVRAA—that supply a carefully calibrated administrative remedy bearing no relation to the FCA's severe regime. Resolving the circuit split presented in the petition on a pure question of law frequently aired in FCA litigation will help guarantee that only proper whistleblowers can pursue *qui tam* litigation and receive a bounty for their success.

CONCLUSION

For the foregoing reasons, and those in the petition, the Court should grant the petition and reverse the Second Circuit's judgment.

Respectfully submitted,

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AMICUS CURIAE BRIEF

170

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IN THE

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Petitioner,

v.

UNITED STATES OF AMERICA, ex rel. DANIEL KIRK,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF *AMICUS CURIAE* OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF THE *AMICUS CURIAE*	2
STATEMENT OF THE CASE	4
SUMMARY OF REASONS FOR GRANTING THE WRIT	5
REASONS FOR GRANTING THE WRIT	7
I. THE SECOND CIRCUIT BELOW, ALONG WITH THE NINTH CIRCUIT, IS IN DIRECT CONFLICT WITH THE FIRST, THIRD AND FIFTH CIRCUITS ON WHETHER AN ADMINISTRATIVE REPORT UNDER THE FREEDOM OF INFORMATION ACT TRIGGERS THE JURISDICTIONAL BAR AGAINST ACTIONS BASED ON PUBLIC DISCLOSURES	7
A. The First, Third And Fifth Circuits Have Held That A Government Agency's Response To A FOIA Request Is A Public Disclosure Of An Administrative Investigation And Report That Precludes A FCA Action.	7
B. In Contrast, The Second And Ninth Circuits Have Ruled That A Government Agency's Response To A FOIA Request Is "Little More Than Duplication" And Does Not Activate The Jurisdictional Bar	12

TABLE OF CONTENTS—Continued

Page

II. THE ISSUE IS EXTREMELY IMPORTANT TO AMERICAN COMPANIES THAT DO BUSINESS WITH THE GOVERNMENT, ALL OF WHOM ARE REQUIRED TO SUBMIT A PLETHORA OF REPORTS 16

A. Federal Contractors Must Submit Numerous VETS-100 Reports Every Year Under Complex And Confusing Regulations 16

B. Federal Law Obligates Federal Contractors To Submit Many Other Reports As Well 19

C. If The Second And Ninth Circuit Decisions Are Permitted To Stand, The Financial Impact On The Many American Businesses Who Are Federal Contractors Will Be Significant .. 22

CONCLUSION 23

TABLE OF AUTHORITIES

FEDERAL CASES — Page

Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102 (1980). 9

Graham County Soil and Water Conservation District v. United States ex rel. Wilson, 559 U.S. ___, 130 S. Ct. 1396 (2010) 7, 8

United States v. Catholic Healthcare West, 445 F.3d 1147 (9th Cir. 2006) 6, 12, 13

United States ex rel. Grynberg v. Praxair, Inc., 389 F.3d 1038 (10th Cir. 2004) 12

United States ex rel. Herbert v. National Academy of Sciences, 1992 U.S. Dist. LEXIS 14063, 1992 WL 247587 (D.D.C. Sept. 15, 1992) 23

United States ex rel. Mistick PBT v. Housing Authority, 186 F.3d 376 (3d Cir. 1999) ..... *passim*

United States ex rel. Ondis v. City of Woonsocket, 587 F.3d 49 (1st Cir. 2009) .. 6, 11

United States ex rel. Reagan v. East Texas Medical Center Regional Healthcare System, 384 F.3d 168 (5th Cir. 2004) 6, 10, 11

Weisberg v. United States Department of Justice, 705 F.2d 1344 (D.C. Cir. 1983) ... 13

FEDERAL STATUTES

Age Discrimination in Employment Act of 1967,
29 U.S.C. §§ 621 *et seq.* 2

Americans with Disabilities Act of 1990,
42 U.S.C. §§ 12111-17 2
42 U.S.C. §§ 12201-13 2

TABLE OF AUTHORITIES—Continued

Page

Consumer Product Safety Act,
15 U.S.C. §§ 2051 *et seq.* 9

False Claims Act,
31 U.S.C. §§ 3729 *et seq* ..... *passim*
31 U.S.C. § 3729(a)(1) 4
31 U.S.C. § 3730 7
31 U.S.C. § 3730(b) 4
31 U.S.C. § 3730(d)(2) 5
31 U.S.C. § 3730(e)(4) 8
31 U.S.C. § 3730(e)(4)(A) 8, 10, 12

Federal Funding Accountability and Transparency Act of 2006,
Pub. L. No. 109-282, 120 Stat. 286 21

Freedom of Information Act,
5 U.S.C. § 552 ..... *passim*
5 U.S.C. § 552(a) 4, 13
5 U.S.C. § 552(b) 13, 15
5 U.S.C. § 552(c) 14
5 U.S.C. § 552(g) 13

Government Funding Transparency Act of 2008,
Pub. L. No. 110-252, 122 Stat. 2323 21

Jobs for Veterans Act of 2002,
Pub. L. No. 107-288, 116 Stat. 2033 ..... 16, 18

Service Contract Act,
41 U.S.C. §§ 351 *et seq.* 20

TABLE OF AUTHORITIES—Continued

	Page
Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*	2, 21
42 U.S.C. § 2000e-8(c)	21
Veterans Benefits and Health Care Improvement Act, Pub. L. No. 106-419, 114 Stat. 1822 (2000)	17, 18
Veterans Employment Opportunities Act, Pub. L. No. 105-339, 112 Stat. 3182 (1998)	17
Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. §§ 4211 *et seq.*	2, 4, 17, 18
38 U.S.C. § 4212(a)(1)	16
38 U.S.C. § 4212(d)	17
FEDERAL REGULATIONS	
41 C.F.R. Part 61-250	18
41 C.F.R. Part 61-300	18
48 C.F.R. § 52.222-8(b)(1)	20
48 C.F.R. § 52.222-8(b)(2)(i)	20
48 C.F.R. § 52.222-26(c)(7)	21
48 C.F.R. § 52.222-41(c)(2)(ii)	20
Reporting Executive Compensation and First-Tier Subcontract Awards, 75 Fed. Reg. 39,414 (July 8, 2010)	20

TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES — Page

Equal Employment Opportunity Commission, *Job Patterns for Minorities and Women in Private Industry (EEO-1)* 22
Equal Employment Opportunity Commission, *Standard Form 100 Instruction Booklet* 21
General Services Administration, Office of Citizen Services and Communications, Federal Citizen Information Center, *Your Right to Federal Records: Questions and Answers on the Freedom of Information Act and Federal Privacy Act* (Nov. 2009) 13
United States Department of Labor, *Freedom of Information Act Annual Report for Fiscal Year 2009* 15
United States Department of Labor, *The Freedom of Information Act Guide* 14
United States Department of Labor, Federal Contractor Veterans Employment Report VETS-100A 19
United States Department of Labor, VETS-100 Federal Contractor Report on Veterans Employment 19
USAspending.gov 16

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF *AMICUS CURIAE* OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF PETITIONER

The Equal Employment Advisory Council respectfully submits this brief as *amicus curiae*. The brief supports the Petition for a Writ of Certiorari.[1]

[1] Counsel of record for all parties received notice at least 10 days prior to the due date of the *amicus curiae's* intention to file this brief. Both parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, their members or their counsel made a monetary contribution to its preparation or submission.

INTEREST OF THE *AMICUS CURIAE*

The Equal Employment Advisory Council (EEAC) is a nationwide association of employers organized in 1976 to promote sound approaches to the elimination of discriminatory employment practices. Its membership includes over 300 major U.S. corporations. EEAC's directors and officers include many of the nation's leading experts in the field of equal employment opportunity. Their combined experience gives EEAC an unmatched depth of knowledge of the practical, as well as legal, considerations relevant to the proper interpretation and application of fair employment policies and practices. EEAC's members are firmly committed to the principles of nondiscrimination and equal employment opportunity. In addition, EEAC's members employ many veterans of the country's armed forces as well as active members of the Guard and Reserve. EEAC's members often go beyond the letter of the nation's laws promoting and protecting the employment of veterans to support their employees who have served, or are serving, in the armed forces.

All of EEAC's members are employers subject to Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.*, as amended, the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §§ 621 *et seq.*, as amended, Titles I and V of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12111-17, 12201-13, and other employment-related statutes and regulations. Most also are federal government contractors subject to various federal record-keeping and reporting requirements, including the obligation under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), 38 U.S.C. § 4211 *et seq.*, as amended, and its implementing

regulations to file annually with the U.S. Department of Labor a "VETS-100" Report on the number of covered veterans employed by them.

Thus, the issue presented in the Petition regarding the scope of the public disclosure bar to jurisdiction under the False Claims Act (FCA), 31 U.S.C. §§ 3729 *et seq.*, is extremely important to the nationwide constituency that EEAC represents. The district court below properly dismissed the instant lawsuit based in part on the statute's jurisdictional bar against actions based on the "public disclosure" of allegations or transactions in an administrative report or investigation under section 3730(e)(4)(A) of the FCA. Pet. App. 52a. The U.S. Court of Appeals for the Second Circuit, however, vacated the district court's opinion and remanded, holding that the responses provided by the U.S. Department of Labor to requests under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for VETS-100 Reports filed by Petitioner, did not qualify as an "enumerated source" that would trigger the FCA's jurisdictional bar. Pet. App. 33a.

EEAC's member companies file a host of required reports with the federal government each year, many of which are subject to disclosure under FOIA. Accordingly, EEAC's members are extremely concerned about the ability of private citizens to seek the substantial monetary rewards offered by the FCA based solely on mandatory reports that they obtain from federal agencies under FOIA.

EEAC thus has an interest in, and a familiarity with, the legal and public policy issues presented to the Court in this case. Because of its experience in these matters, EEAC is well-situated to brief this

Court on the importance of the issues beyond the immediate concerns of the parties to the case.

STATEMENT OF THE CASE

Petitioner Schindler Elevator Corporation (Schindler) manufactures, installs, and maintains elevators. Pet. App. 49a-50a. Since some of these elevators are in federal buildings, Schindler is a federal government contractor subject to the recordkeeping and reporting requirements of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), 38 U.S.C. §§ 4211 *et seq.*, as amended, including the obligation to annually file VETS-100 Reports listing the number of covered veterans employed by the company during the reporting period. Pet. App. 50a.

The Relator Daniel Kirk worked for Schindler from 1978 until his voluntary resignation in August 2003. Pet. App. 4a. Following his resignation, Kirk's wife filed several requests with the U.S. Department of Labor (DOL) under the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552(a), for copies of Schindler's VETS-100 Reports for the years 1998 through 2006. Pet. App. 8a-9a. In response, the DOL produced copies of the company's VETS-100 Reports for 2002, 2004, 2005 and 2006, but responded that it had not located reports for the other years. *Id.*

Kirk sued Schindler under the federal False Claims Act (FCA), 31 U.S.C. §§ 3729 *et seq.* Pet. App. 5a. The FCA prohibits false claims against the federal government, *e.g.*, presenting false claims for payment. 31 U.S.C. § 3729(a)(1). It allows an individual, called a "relator," to bring a *qui tam* suit on behalf of the federal government for a violation of the FCA. 31 U.S.C. § 3730(b). If the government, which has the option to participate in the suit, chooses not to do so,

and the relator's suit succeeds, the relator can be awarded an amount between 25% and 30% of the proceeds, plus expenses, attorney's fees, and costs. 31 U.S.C. § 3730(d)(2).

Kirk contends that Schindler failed to file VETS-100 Reports as required by VEVRAA for the years 1998 through 2001, and 2003, filed false VETS-100 Reports in 2004, 2005, and 2006, and filed a late, and false, VETS-100 Report in 2002. Pet. App. 10a. According to Kirk, Schindler's allegedly non-existent or deficient VETS-100 Reports rendered each request for payment submitted by the company to the federal government under the company's federal contracts a "false or fraudulent claim" in violation of the FCA. Pet. App. 11a.

The district court dismissed the case, concluding that Kirk's action was barred under the provision in the FCA that deprives courts of jurisdiction over lawsuits based on allegations or transactions that have been publicly disclosed in an administrative report or investigation. Pet. App. 87a. The Second Circuit vacated and remanded, holding that the FCA's jurisdictional bar did not apply to the Department of Labor FOIA responses that formed the basis for Kirk's suit. Pet. App. 47a-48a. Schindler has petitioned this Court for a writ of certiorari.

SUMMARY OF REASONS FOR GRANTING THE WRIT

The Second and Ninth Circuits are in direct conflict with the First, Third and Fifth Circuits on an issue of extreme importance to American businesses. The First, Third and Fifth Circuits have ruled that a government agency's response to a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, is

a public disclosure of an administrative report and investigation that triggers the jurisdictional bar of the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* *United States ex rel. Ondis v. City of Woonsocket*, 587 F.3d 49 (1st Cir. 2009); *United States ex rel. Mistick PBT v. Housing Auth.*, 186 F.3d 376 (3d Cir. 1999), *United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168 (5th Cir. 2004). In contrast, the Second and Ninth Circuits have concluded that a FOIA response is "little more than duplication" and does not activate the jurisdictional bar. Pet. App. 19a, 47a-48a, *United States v. Catholic Healthcare West*, 445 F.3d 1147, 1153 (9th Cir. 2006).

This issue is extremely important to businesses that contract with the government. All of these companies must submit a multitude of reports to the federal government every year. Some of these, including the VETS-100 Reports at issue, are required because the companies are federal contractors; others are required of nearly all U.S. employers. If the Second and Ninth Circuit's interpretations of the FCA are permitted to stand, any and all of these reports could form the basis of *qui tam* suits by opportunists seeking the pot of gold that the FCA offers, and American businesses will pay the price.

REASONS FOR GRANTING THE WRIT

I. THE SECOND CIRCUIT BELOW, ALONG WITH THE NINTH CIRCUIT, IS IN DIRECT CONFLICT WITH THE FIRST, THIRD AND FIFTH CIRCUITS ON WHETHER AN ADMINISTRATIVE REPORT UNDER THE FREEDOM OF INFORMATION ACT TRIGGERS THE JURISDICTIONAL BAR AGAINST ACTIONS BASED ON PUBLIC DISCLOSURES

A. The First, Third And Fifth Circuits Have Held That A Government Agency's Response To A FOIA Request Is A Public Disclosure Of An Administrative Investigation And Report That Precludes A FCA Action

The False Claims Act prohibits fraud against the government by federal contractors, and allows a private citizen, known as "the relator," to bring a lawsuit on behalf of the United States against a contractor for alleged practices that defraud the government. 31 U.S.C. §§ 3729 *et seq.* When Congress amended the FCA in 1986 to expand the ability of private citizens to sue a federal contractor for submitting false claims to the federal government, 31 U.S.C. § 3730, it was mindful of the dangers of allowing private citizens to seize on public information to gain a quick cash reward. "[I]n an effort to strike a balance between encouraging private persons to root out fraud and stifling parasitic lawsuits . . . ," *Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. ___ , 130 S. Ct. 1396, 1407 (2010), Congress specifically excluded from the subject matter jurisdiction of courts "an

action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation . . . ." 31 U.S.C. § 3730(e)(4)(A).[2]

In *United States ex rel. Mistick PBT v. Housing Auth.*, 186 F.3d 376 (3d Cir. 1999), the Third Circuit, in an opinion written by then-Judge Alito, ruled that a response to a Freedom of Information Act (FOIA), 5 U.S.C. § 552, request constitutes a public disclosure that triggers the jurisdictional bar precluding lawsuits brought under the FCA. In that case, the relator was the general contractor for a public housing lead-based paint abatement project. *Id.* at 379. The relator sued the Housing Authority of the City of Pittsburgh and a subcontractor, alleging that the defendants had submitted false claims to the U.S. Department of Housing and Urban Development (HUD) for the cost of lead-based paint abatement. *Id.* at 381. The lawsuit claimed that two false claims had been submitted to HUD in violation of the FCA. First, the original specifications submitted by the subcontractor allegedly were false because they were based on the use of the wrong product. *Id.* at 381-82. Second, the request for additional funding to pay for

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[2] As this Court noted in *Graham County*, 130 S. Ct. at 1400 n.1, Section 10104(j)(2) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, signed into law on March 23, 2010, replaced the prior version of 31 U.S.C. § 3730(e)(4) with new language, but is not retroactive. In this brief, we use the present tense in discussing § 3730(e)(4) as it existed at the time this case arose. In any event, the new version still includes the "report . . . or investigation," language which is at issue in this case, and thus does not resolve the disagreement among the circuits.

switching to the right product allegedly was fraudulent because the stated reason for the switch was false. *Id.* at 382. The FCA claims stemmed directly from information the relator received from HUD in response to its FOIA request. *Id.* at 381.

In analyzing the case, the Third Circuit pointed first to the plain text of the FOIA, which provides that "'each agency shall make available *to the public*' certain specified categories of information." *Id.* at 383 (citation omitted). Relying on this Court's decision in *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102 (1980), which held that the disclosure of information in response to a FOIA request constituted a public disclosure under the Consumer Product Safety Act, 15 U. S. C. § 2051 *et seq.*, the Third Circuit concluded that documents released in response to the FOIA request were the product of an administrative investigation that triggered the public disclosure bar under the FCA. *Id.*

The Third Circuit pointed out this Court's observation in *GTE Sylvania*: "'*As a matter of common usage the term "public" is properly understood as including persons who are FOIA requesters.* A disclosure pursuant to the FOIA would thus seem to be most accurately characterized as a "public disclosure" within the plain meaning of [the Consumer Product Safety Act].'" *Id.* at 383 (quoting 447 U.S. at 108-09). Accordingly, the Third Circuit concluded: "We see no sound basis for construing the term 'public disclosure' any more narrowly here than the Supreme Court did in *GTE Sylvania*." *Id.*

The Third Circuit next concluded that a FOIA response constitutes a "report" and "investigation" for the purpose of invoking the FCA's jurisdictional bar. Noting the dictionary definition of the word "report,"

the Third Circuit concluded that "[a] response to a FOIA request falls within these definitions. Such a response provides information and notification regarding the results of the agency's search for the requested documents and constitutes an official and formal statement concerning those results." *Id.* at 383-84.

In so doing, the Third Circuit took notice of the obligations that FOIA places on an agency that receives a request, and the actions that agency must perform in response. It observed:

> HUD's search for the documents sought under the FOIA and its decision to disclose them clearly satisfied our court's interpretation of the term 'administrative,' and we believe that these processes should be viewed as constituting an 'investigation' within the meaning of 31 U.S.C. § 3730(e)(4)(A). Accepted definitions of the term 'investigation' include 'a detailed examination,' . . . and the 'making of a search.' . . . When an agency receives a FOIA request, it is obligated to conduct a search that is reasonably calculated to uncover all relevant documents. . . . Such a search falls within the common understanding of the term 'investigation.'

186 F.3d at 384 (citations and footnotes omitted).

The Third Circuit thus ruled in *Mistick* that a response to a FOIA request is a "public disclosure" that triggers the jurisdictional bar under 31 U.S.C. § 3730(e)(4)(A).

The Fifth Circuit reached the same conclusion in *United States ex rel. Reagan v. East Texas Medical Center Regional Healthcare System*, 384 F.3d 168 (5th Cir. 2004). There, a relator sought to maintain

an FCA suit for Medicare fraud based in part on information she obtained through FOIA requests. "[P]ersuaded by the reasoning of *Mistick*," the Fifth Circuit held in its turn that "the response to [the relator's] FOIA request is an administrative report constituting a public disclosure under § 3730(e)(4)(A)." *Id.* at 176 (footnote omitted).

Similarly, in *United States ex rel. Ondis v. City of Woonsocket*, the First Circuit, relying in part on *Mistick*, concluded that "a response to a FOIA request is an act of public disclosure because the response disseminates (and, thus, discloses) information to members of the public (and, thus, outside the government's bailiwick)." 587 F.3d 49, 55 (1st Cir. 2009). Here, too, the First Circuit noted this Court's observation in *GTE Sylvania* that the word "public" includes FOIA requesters for the purpose of the statute being construed in that case, and concluded, that "this reasoning [is] easily transferable to the jurisprudence of the FCA . . . ." *Id.*

The First Circuit concluded that "a FOIA response is a report, at least in the sense that it constitutes an official statement concerning the results of the agency's search of its files." *Id.* at 56. Like the Third Circuit in *Mistick*, the First Circuit looked at the dictionary definition of "report" and concluded that "[t]he result of an agency's search of its files in response to a FOIA request fits comfortably within this broad definition." *Id.* Acknowledging the work involved in an agency's response to a FOIA request, the First Circuit concluded that "[j]ust as transmittal of the FOIA response to the relator constitutes an act of public disclosure, the end product of the government's search (locating and compiling the requested documents) independently constitutes an administra-

tive report – and this is so regardless of the character of the underlying documents." *Id.*

The Sixth Circuit also has stated that "[i]t is generally accepted that a response to a request under the FOIA is a public disclosure." *United States ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038, 1051 (10th Cir. 2004) (citations omitted).

B. In Contrast, The Second And Ninth Circuits Have Ruled That A Government Agency's Response To A FOIA Request Is "Little More Than Duplication" And Does Not Activate The Jurisdictional Bar

In direct contrast to the First, Third and Fifth Circuits, the court below, and the Ninth Circuit as well, have concluded that a federal administrative agency's response to a FOIA request is not always a public disclosure that triggers the FCA's jurisdictional bar. Pet. App. 47a-48a; *United States v. Catholic Healthcare West*, 445 F.3d 1147, 1153 (9th Cir. 2006). The court below, relying largely on the Ninth Circuit's decision in *Catholic Healthcare*, ruled that "whether a document obtained through a FOIA request is an enumerated source within the meaning of § 3730(e)(4)(A) depends on the nature of the document itself." Pet. App. 23a. Disagreeing specifically with *Mistick*, the court below gave the language of the jurisdictional bar a much narrower interpretation, stating that a "report," in this context, "connotes the compilation or analysis of information with the aim of synthesizing that information in order to serve some end of the government, as in a 'hearing' or 'audit.'" *Id.* at 24a. Contrary to the Third Circuit's recognition of the effort an agency must put forth in responding to a FOIA request, the Second Circuit

dismissed these labors as a "mechanistic production of documents, *id.*, as did the Ninth Circuit in *Catholic Healthcare*, 445 F.3d at 1153 (quoting *Mistick*, 186 F.3d at 393) (Becker, C.J., dissenting). *See also id.* (describing a response to a FOIA request as "little more than duplication").

The Second and Ninth Circuits underrate significantly the amount of effort a government agency must devote to responding to a FOIA request. As the government itself explains, an agency that receives a FOIA request must "find the records, examine them, possibly consult with other agencies or components within the same agency, decide whether to disclose all of the information requested, and prepare the records for release. . . ."[3] Under FOIA, when an agency receives a request, it must conduct a search to determine if it has any relevant documents in its possession. *See* 5 U.S.C. § 552(a). The search must be "reasonably calculated to uncover all relevant documents." *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). FOIA requires each agency to develop and publicize a reference guide for submitting FOIA requests. 5 U.S.C. § 552(g).

Even if the agency locates documents responsive to the FOIA request, it cannot simply provide copies to the requester. Instead, it must conduct a thorough analysis of the records to determine if one or more of the nine exemptions (including multiple subparts) set forth in 5 U.S.C. § 552(b) would apply to bar the agency from disclosing the documents. In addition,

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[3] GSA Ofc. of Citizen Servs. and Communs., Fed. Citizen Info. Ctr., *Your Right to Federal Records: Questions and Answers on the Freedom of Information Act and the Privacy Act* 7 (Nov. 2009), *available at* http://www.pueblo.gsa.gov/cic_text/fed_prog/foia/foia.pdf

the agency must review the documents in light of three statutory exclusions that pertain to especially sensitive law enforcement and national security matters. 5 U.S.C. § 552(c).

In its own FOIA Guide, the Department of Labor describes the labor-intensive investigation that agency officials must conduct to respond to FOIA requests: "Some components of the Labor Department, [sic] receive thousands of requests each year. *Many of these requests require a line-by-line review of hundreds or even thousands of pages of documents.*" U.S. Dep't of Labor, *The Freedom of Information Act Guide*.[4]

As the DOL points out in its FOIA Guide, not only must the agency analyze the relevant documents to determine whether any of the FOIA exemptions apply, but if it concludes that information should not be disclosed, then it must identify the specific exemption that applies. "There are statutory exemptions that authorize the withholding of information of an appropriately sensitive nature. When the Labor Department withholds information, it ordinarily must specify which exemption of the FOIA permits the withholding." *Id.* The agency thus creates a written record to report the relevant exemption(s) to the requester: "The determination letter will advise you of any information that is being withheld pursuant to one or more of the exemptions. When pages are being withheld in their entirety, the component will specify the volume of the materials denied and/or, if feasible, the location of excluded material." *Id.* Moreover, even if the agency's analysis leads it to

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[4] *available at* http://www.dol.gov/dol/foia/guide6.htm (last visited Aug. 26, 2010) (emphasis added).

conclude that a particular record is subject to a FOIA exemption, the FOIA requires it to further analyze the record to determine whether there is any portion of it which is "reasonably segregable" so as to allow for its disclosure. 5 U.S.C. § 552(b).

In fiscal year 2008, DOL reported processing nearly 17,000 FOIA requests.[5] Of those FOIA requests, the agency granted only 28% in full. DOL denied 32% in full – 10% based on one or more of the statutory exemptions, and 22% based on grounds other than the FOIA exemptions. *Id.* Another 40% were granted in part and denied in part. That the agency granted in full only 28% of the FOIA requests it processed that year shows that merely duplicating documents accounts for, if anything, only a small portion of the FOIA responses conducted by agencies every year. *Id.*

There is a sharp and clear conflict among the courts of appeals on this issue. The Second and Ninth Circuits have discounted significantly the extent of the investigation that FOIA demands each agency perform in response to a request as well as the nature of the report that is issued. EEAC respectfully submits that this Court should grant a writ of certiorari, resolve the conflict, and reverse the decision of the Second Circuit below.

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[5] U.S. Dep't of Labor, *Freedom of Information Act Annual Report for Fiscal Year 2009*, http://www.dol.gov/sol/foia/2010anrpt.htm (last visited Aug. 26, 2010).

II. THE ISSUE IS EXTREMELY IMPORTANT TO AMERICAN COMPANIES THAT DO BUSINESS WITH THE GOVERNMENT, ALL OF WHOM ARE REQUIRED TO SUBMIT A PLETHORA OF REPORTS

A. Federal Contractors Must Submit Numerous VETS-100 Reports Every Year Under Complex And Confusing Regulations

Allowing private individuals to sue under the FCA for fraud based on the filing of mandatory reports to the government that have been publicly disclosed pursuant to a FOIA request would adversely affect the efficiency and economy with which the federal government purchases goods and services from contractors. In fiscal year 2009, the federal government reported that nearly 50,000 companies had government contracts worth $100,000 or more,[6] the statutory threshold for triggering the VETS-100 reporting requirement.[7]

Together, those companies employ millions of workers, any one of whom could submit a FOIA request for the VETS-100 Reports filed by his or her company and launch a *qui tam* case for fraud against the government, thus increasing substantially the risk to employers of having to defend many more frivolous lawsuits, and in turn increasing the cost to federal contractors of doing business with the government.

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[6] USAspending.gov, http://www.usaspending.gov (last visited Aug. 26, 2010).

[7] The Jobs for Veterans Act of 2002 raised the monetary threshold for government contracts from $25,000 to $100,000 to trigger the VETS-100 filing. 38 U.S.C. § 4212(a)(1).

Further complicating matters, Congress has revised the reporting requirements of the VETS-100 Report multiple times over the past several years. The DOL, in turn, has revised its regulations to implement the changes, although those revisions often have not become final until after the effective date of the changes already has occurred. The confusion that has resulted over which version of the regulations and forms contractors must follow makes it patently unreasonable to expect complete accuracy of every VETS-100 submission.

As noted, federal contractors are required annually to report aggregate workforce demographic data on certain specified categories of covered veterans on a VETS-100 Report. VEVRAA, 38 U.S.C. § 4212(d). Initially, two categories of veterans were covered under the statute: (1) Veterans of the Vietnam Era; and (2) Special Disabled Veterans. Since 1998, however, VEVRAA has been amended three times, with each amendment resulting in changes to the categories of covered veterans for reporting purposes.

- In 1998, the Veterans Employment Opportunities Act (VEOA) added "Other Protected Veterans" to the list of covered veterans categories for reporting purposes, and defined this new category as those veterans "who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized." Pub. L. No. 105-339, 112 Stat. 3182 (1998).
- In 2000, the Veterans Benefits and Health Care Improvement Act (VBHCIA) added "Recently Separated Veterans" to the list of covered veterans categories for reporting purposes, and defined this new category to

include "any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty." Pub. L. No. 106-419, 114 Stat. 1822 (2000).

- In 2002, the Jobs for Veterans Act (JVA), added "Armed Forces Services Medal Veterans" to the list of covered veterans categories for reporting purposes, expanded the definition of "Recently Separated Veterans" to include "any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty," replaced the "Special Disabled Veterans" category with a newly defined "Disabled Veterans" category, and eliminated the category for Vietnam Era Veterans. The JVA changes, though, applied only to federal contracts or subcontracts of $100,000 entered into or modified on or after December 1, 2003. Pub. L. No. 107-288, 116 Stat. 2033 (2002).

To make matters even more confusing for federal contractors, there are now two sets of regulations that implement the reporting requirements established by VEVRAA. The first set of regulations – 41 C.F.R. Part 61-250 – establishes the VETS-100 reporting requirements under VEVRAA for federal contracts entered into prior to the December 1, 2003 effective date of the JVA. The second set of regulations – 41 C.F.R. Part 61-300 – establishes the reporting requirements under VEVRAA as amended by the JVA of 2002. Because the JVA did not replace the VETS-100 reporting requirements that had been in effect prior to its enactment, DOL was required to issue separate regulations and institute a *new* annual reporting form, the VETS-100A, that reflected the

JVA's higher dollar threshold and new covered veteran categories. As a result of these cumulative changes, federal contractors have been in a constant state of flux for the past several years over how to best comply with their VETS-100 reporting requirements.

Moreover, a federal contractor's VETS-100 and VETS-100A reporting obligations are more than a single report. Covered employers with multiple establishments must file a VETS-100/VETS-100A form for each establishment (or "hiring location") employing 50 or more persons. Establishments with fewer than 50 employees may submit their own separate VETS-100/VETS-100A forms or may be consolidated with other under-50 locations in the same state.[8]

B. Federal Law Obligates Federal Contractors To Submit Many Other Reports As Well

In addition to submitting annual VETS-100 and VETS-100A Reports, federal contractors must comply with many other reporting requirements as a condition of doing business with the government, which if deemed subject to the rule adopted by the Second and Ninth Circuits also potentially would expose them to a flood of costly and time-consuming litigation. The Federal Acquisition Regulations (FAR) require contractors subject to the Davis-Bacon Act, for example, to submit to the contracting officer, on a weekly basis, copies of their payrolls containing the weekly

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[8] U.S. Dep't of Labor, VETS-100 Federal Contractor Report on Veterans Employment, http://www.dol.gov/vets/programs/fcp/VETS-100.pdf, and Federal Contractor Veterans Employment Report VETS-100A, http://www.dol.gov/vets/programs/fcp/VETS-100a.pdf (last visited Aug. 26, 2010).

wages and hours worked by laborers and mechanics. 48 C.F.R. § 52.222-8(b)(1). The payroll records must set out "accurately and completely all of the information required to be maintained," and must be accompanied by a "Statement of Compliance" signed by the contractor that certifies that the information "is correct and complete." *Id.* at §§ 52.222-8(b)(1)-(b)(2)(i).

Similarly, the Service Contract Act (SCA), 41 U.S.C. §§ 351 *et seq.*, requires federal government contractors performing service on covered contracts to pay employees no less than the applicable wage rates and fringe benefits for their work. Contractors must submit to the contracting officer a Standard Form 1444, Request for Authorization of Additional Classification and Rate, if they have an unlisted class of employees that is to perform any contract work. 48 C.F.R. § 52.222-41(c)(2)(ii).

Further, under the government's new transparency efforts, a new interim rule, which the issuing federal agencies describe as "sweeping" in its breadth, will require most federal contractors to report to the government key information on all first-tier subcontracts of $25,000 or more, including the names and addresses of all first-tier subcontractors and the dates and amounts of all subcontracts; and, if certain thresholds are met, (1) disclose and report the names and total compensation of each subcontractor's five most highly compensated executives; and (2) disclose and report the names and total compensation of each of their own five most highly compensated executives. Reporting Executive Compensation and First-Tier Subcontract Awards, 75 Fed. Reg. 39,414, 39,416 (July 8, 2010) (to be codified at 48 C.F.R. pts. 4, 12, 42 & 52). The rule expands upon and makes perma-

nent a pilot program tested in 2007 to implement the Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282, 120 Stat. 286, as amended by section 6202 of the Government Funding Transparency Act of 2008, Pub. L. No. 110-252, 122 Stat. 2323, which required the federal government to create a single, easily accessible, searchable and cost-free database that allows the public to see how its tax dollars are being spent on federal awards. *Id.*

In addition, federal contractors also must comply with various federal recordkeeping and reporting requirements that apply to employers generally. Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.*, as amended, requires all employers with 100 or more employees to file annually with the government the "Employer Information Report" (EEO-1), which contains statistical data on the race and ethnicity of the employer's workforce at each establishment, broken down into various job categories. 42 U.S.C. § 2000e-8(c).[9] Covered employers with multiple establishments must file an EEO-1 form for each establishment employing 50 or more persons, as well as a headquarters report and a consolidated report.[10] In 2008, the government reported that over 68,300 employers, collectively em-

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[9] The FAR provides that federal contractors "shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 C.F.R. part 60-1." 48 C.F.R. § 52.222-26(c)(7).

[10] Equal Employment Opportunity Commission, *Standard Form 100 Instruction Booklet*, http://www.eeoc.gov/employers/eeo1survey/upload/instructions_form.pdf (last visited Aug. 26, 2010).

ploying more than 62.2 million workers, filed EEO-1 Reports.[11]

C. If The Second And Ninth Circuit Decisions Are Permitted To Stand, The Financial Impact On The Many American Businesses Who Are Federal Contractors Will Be Significant

Every VETS-100, EEO-1 or other report that a federal contractor submits to the federal government thus produces a record that potentially is subject to public disclosure pursuant to a FOIA request. Under the rule adopted by the Second and Ninth Circuits, each one of those documents, once disclosed in a FOIA response, could lead to a *qui tam* lawsuit against a company, thus exponentially increasing the exposure of employers to parasitic lawsuits filed by opportunistic plaintiffs seeking to capitalize on publicly disclosed information, and forcing courts to rule on significantly more cases.

As the U.S. District Court for the District of Columbia once said,

> it must be the case that information obtained pursuant to an [sic] FOIA request has been made public through the administrative process and cannot form the basis of a qui tam action. If that were not the case then, . . . public agency records would be flooded with citizens requesting information in order to bring qui tam suits. Congress did not intend the qui tam provision to transform

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[11] Equal Employment Opportunity Commission, *Job Patterns for Minorities and Women in Private Industry (EEO-1)*, http://www.eeoc.gov/eeoc/statistics/employment/jobpat-eeo1/index.cfm (last visited Aug. 26, 2010).

> FOIA from sunshine legislation into a search for the pot of gold at the end of the rainbow.

United States ex rel. Herbert v. Nat'l Academy of Sciences, 1992 U.S. Dist. LEXIS 14063, at *16, 1992 WL 247587, at *6 (D.D.C. Sept. 15, 1992), *quoted in Mistick*, 186 F.3d at 385. If this Court allows the Second and Ninth Circuit's interpretation to stand, American businesses will shoulder the exorbitant costs of the many pot of gold searches that are guaranteed to ensue. EEAC respectfully submits that this Court should grant the writ of certiorari.

CONCLUSION

For the foregoing reasons, *amicus curiae* Equal Employment Advisory Council respectfully submits that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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JOINT APPENDIX

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IN THE

Supreme Court of the United States

SCHINDLER ELEVATOR CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA,
ex rel. DANIEL KIRK,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

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127

TABLE OF CONTENTS

Page

APPENDIX A — DOCKET ENTRIES, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT 1a

APPENDIX B — DEFENDANT SCHINDLER ELEVATOR CORPORATION'S NOTICE OF MOTION TO DISMISS THE COMPLAINT, DATED SEPTEMBER 4, 2007 ..... 9a

APPENDIX C — DECLARATION OF STEVEN A. REISS FOR DEFENDANT, IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT, DATED SEPTEMBER 4, 2007 ..... 11a

APPENDIX D — EXHIBIT A TO REISS DECLARATION—AMENDED COMPLAINT, DATED JUNE 21, 2007 ..... 15a

APPENDIX E — AFFIDAVIT OF DANIEL E. KIRK, JR., PLAINTIFF, IN OPPOSITION TO MOTION TO DISMISS THE COMPLAINT, DATED SEPTEMBER 27, 2007 ..... 47a

Table of Contents

Page

APPENDIX F — DECLARATION OF JONATHAN A. WILLENS, FOR PLAINTIFF, IN OPPOSITION TO MOTION TO DISMISS THE COMPLAINT, DATED SEPTEMBER 28, 2007 ..... 75a

APPENDIX G — EXHIBIT A TO WILLENS DECLARATION — UNSEALING ORDER, DATED JUNE 11, 2007 ..... 78a

APPENDIX H — EXHIBIT C TO WILLENS DECLARATION — STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA, DATED APRIL 13, 2007 ..... 81a

APPENDIX I — LETTER FROM JONATHAN A. WILLENS DATED DECEMBER 4, 2009 ..... 104a

APPENDIX J — LETTER FROM PATSY BAKER BLACHSEAR, PH.D. STAMPED NOVEMBER 24, 2009 ..... 106a

APPENDIX K — LETTER FROM STEVEN ALAN REISS DATED DECEMBER 4, 2009 ..... 121a

Table of Contents

Page

The following opinions, order, statutes and regulations have been omitted from the Joint Appendix because they appear in the Appendix of the Petition for a Writ of Certiorari on the following pages:

Appendix A — Opinion Of The United States Court Of Appeals For The Second Circuit Decided April 6, 2010 ..... 1a

Appendix B — Opinion And Order Of The United States District Court For The Southern District Of New York Dated March 30, 2009 ..... 49a

Appendix C — Relevant Statutes And Regulations 88a

APPENDIX A — DOCKET ENTRIES, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK CIVIL DOCKET FOR CASE #:1:05-CV-02917-SHS

Date Filed	#	Docket Text
		* * *
03/16/2005	1	ORDER, Case sealed. (Signed by Judge Sealed on 3/16/05) (wv,) (Entered: 03/17/2005)
06/13/2007	14	ORDER, That the complaint shall be unsealed and service upon defendant by the plaintiff-relator is authorized. The Government's Notice of Election to Decline Intervention shall be served by the plaintiff-relator upon defendant only after service of the complaint. The ex parte status reports submitted to the Court by the Government, pursuant to 31 U.S.C. § 3730(b)(3), shall remain under seal and not be made public or served upon the defendant. The seal shall be lifted as to all other matters occuring in this action. The parties shall serve all pleadings and motions filed in this action, including

supporting memoranda and materials, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts. The United States is entitled to intervene in this action, for good cause, at any time. All orders of this Court shall be sent to the United States by plaintiff-relator. Should the plaintiff-relator or the defendants propose that this action be dismissed, settled, or otherwise discontinued, the Court will solicit the written consent of the United States before ruling or granting its approval. There will be a pretrial conference on July 26, 2007 at 10:30 a.m. (Signed by Judge Sidney H. Stein on 6/11/2007) (kj) (Entered: 06/19/2007)

06/13/2007 15 COMPLAINT against Schindler Elevator Corporation. Document filed by Daniel Kirk. Originally filed under seal, document # 2.(db) (Entered: 06/26/2007)

06/13/2007 16 The Government's NOTICE of Election to Decline Intervention pursuant to 31 USC § 3720(b)(4)(B). Document filed by United States of America. Originally filed under seal, document # 13. (db) (Entered: 06/26/2007)

Appendix A

06/22/2007	17	AMENDED COMPLAINT; amending 15 Complaint against Schindler Elevator Corporation. Document filed by Daniel Kirk. Related document: 15 Complaint filed by Daniel Kirk.(pl) Additional attachment(s) added on 6/26/2007 (Boneta, Dennis). (Entered: 06/26/2007)

* * *

09/04/2007	20	MOTION to Dismiss *the First Amended Complaint*. Document filed by Schindler Elevator Corporation. (Reiss, Steven) (Entered: 09/04/2007)
09/04/2007	21	MEMORANDUM OF LAW in Support re: 20 MOTION to Dismiss *the First Amended Complaint*. Document filed by Schindler Elevator Corporation. (Reiss, Steven) (Entered: 09/04/2007)
09/04/2007	22	DECLARATION of Steven A. Reiss in Support re: 20 MOTION to Dismiss *the First Amended Complaint*. Document filed by Schindler Elevator Corporation. (Attachments: # 1 Exhibit A (part 1)# 2 Exhibit A (part 2)# 3 Exhibit B)(Reiss, Steven) (Entered: 09/04/2007)

* * *

Appendix A

09/28/9007	24	MEMORANDUM OF LAW in Opposition re: 20 MOTION to Dismiss *the First Amended Complaint.* Document filed by Daniel Kirk. (Willens, Jonathan) (Entered: 09/28/2007)
09/28/2007	25	AFFIDAVIT of Daniel E. Kirk, Jr. in Opposition re: 20 MOTION to Dismiss *the First Amended Complaint.* Document filed by Daniel Kirk. (Attachments: # 1 Exhibit Kirk Aff., Exhibits A-G# 2 Exhibit Kirk Aff., Exhibit H# 3 Exhibit Kirk Aff., Exhibit I)(Willens, Jonathan) (Entered: 09/28/2007)
09/28/9007	26	DECLARATION of Jonathan A. Willens in Opposition re: 20 MOTION to Dismiss *the First Amended Complaint.* Document filed by Daniel Kirk. (Willens, Jonathan) (Entered: 09/28/2007)

* * *

10/12/2007	28	REPLY to Response to Motion re: 20 MOTION to Dismiss *the First Amended Complaint. Revised Brief.* Document filed by Schindler Elevator Corporation. (Reiss, Steven) (Entered: 10/12/2007)

Appendix A

* * *

03/30/2009	30	OPINION AND ORDER #97340: Because the Court finds that many of Kirk's allegations fail to state a claim under the FCA and that Kirk's remaining claims are barred as "publicly disclosed" pursuant to 31 U.S.C. § 3730(e)(4)(A), defendant's motion to dismiss the amended complaint is granted. The Clerk of Court is directed to enter judgment dismissing the complaint. 20 MOTION to Dismiss *the First Amended Complaint* filed by Schindler Elevator Corporation. (Signed by Judge Sidney H. Stein on 3/30/09) (db) Modified on 4/1/2009 (mro). (Entered: 03/30/2009)

* * *

03/30/2009	32	NOTICE OF APPEAL from 30 Memorandum & Opinion, 31 Clerk's Judgment. Document filed by Daniel Kirk. Filing fee $455.00, receipt number E 685297. (nd) (Entered: 04/21/2009)

* * * *

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
DOCKET SHEET FOR CASE #: 09-1678

04/21/2009	APPELLANT Qui Tam Kirk, Copy of notice of appeal and district court docket entries on behalf of APPELLANT Qui Tam Kirk, filed. [Entry date Apr 29 2009] [CM]

* * *

07/10/2009	APPELLANT Qui Tam United States of America ex rel. Daniel Kirk, brief and special appendix FILED with proof of service. [Entry date Jul 10 2009] [ML]

* * *

07/22/2009	AMICUS CURIAE United States, brief filed with proof of service. [Entry date Jul 23 2009] [ML]

* * *

09/09/2009	APPELLEE Schindler Elevator Corporation, brief filed with proof of service. [Entry date Sep 10 2009] [DB]

* * *

Appendix A

09/23/2009	APPELLANT United States of America ex rel. Daniel Kirk, reply brief filed with proof of service. [Entry date Sep 24 2009] [ML]
	* * *
11/10/2009	AMICUS CURIAE Equal Employment Advisory Counsel, brief filed with proof of service. [Entry date Nov 10 2009] [SC]
	* * *
11/17/2009	Order FILED GRANTING motion participate as amicus curiae by Amicus Curiae United States, endorsed on motion dated 11/13/2009 [Entry date Nov 18 2009] [SC]
	* * *
12/4/2009	Letter dated 12/04/2009 received from Jonathan A. Willens, Esq., in re: attaching a letter from the US Department of Labor dated 11/24/2009 [Entry date Dec 4 2009] [ML]
12/08/2009	Letter dated 12/4/2009 received from Steven Alan Reiss, Esq., in response to Appellants letter dated 12/04/2009 from Jonathan A. Willens, Esq., in re:

	decision of 11/24/2009 by the US Department of Labor. [Entry date Dec 8 2009] [ML]
12/09/2009	APPELLEE Schindler Elevator Corporation, 28(J) letter dated 12/9/2009 received from Steven Alan Reiss, Esq., in re: recent decision of the 1st Circuit Court of Appeals, US ex rel. Ondis v. City of Woonsocket. [Entry date Dec 9 2009] [ML]
12/10/2009	Case heard before panel: McLAUGHLIN, KATZMANN, LYNCH, C.J.J. [Entry date Dec 10 2009] [AG]
	* * *
04/06/2010	OPINION, vacate and remand judgment of the district court, by JMcL, RAK, GEL, FILED. [Entry date Apr 6 2010] [ML]
04/06/2010	JUDGMENT FILED. [Entry date Apr 6 2010] [ML]

APPENDIX B — DEFENDANT SCHINDLER ELEVATOR CORPORATION'S NOTICE OF MOTION TO DISMISS THE COMPLAINT, DATED SEPTEMBER 4, 2007

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

05 CIV. 2917 (SHS)(KNF)

UNITED STATES OF AMERICA
EX REL. DANIEL KIRK,

Plaintiff,

– Against –

SCHINDLER ELEVATOR CORPORATION

Defendant.

DEFENDANT SCHINDLER ELEVATOR CORPORATION'S NOTICE OF MOTION TO DISMISS THE COMPLAINT

PLEASE TAKE NOTICE that on September 4, 2007, or as soon thereafter as counsel may be heard, Defendant Schindler Elevator Corporation ("Schindler") will move before the Honorable Sidney H. Stein in the United States District Court, Southern District, New York, seeking the dismissal of plaintiff's First Amended Complaint in its entirety on the grounds that: (1) this Court does not have subject matter jurisdiction over

this matter because relator, Daniel Kirk, bases his claim on publicly available information and he is not the original source of that information; (2) relator fails to plead fraud with specificity, as required by Rule 9(b) of the Federal Rules of Civil Procedure; and (3) the Court should defer to the jurisdiction of the Department of Labor under the primary jurisdiction doctrine.

PLEASE TAKE FURTHER NOTICE that in support of this motion defendant will rely upon its Memorandum of Law dated September 4, 2007, and the Declaration of Steven A. Reiss, dated September 4, 2007, which are being filed and served herewith.

DATED: September 4, 2007

New York, New York

WEIL, GOTSHAL & MANGES LLP

By: /s/
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APPENDIX C — DECLARATION OF STEVEN A. REISS FOR DEFENDANT, IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT, DATED SEPTEMBER 4, 2007

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

05 CIV. 2917 (SHS)(KNF)

UNITED STATES OF AMERICA
EX REL. DANIEL KIRK,

Plaintiffs,

– Against –

SCHINDLER ELEVATOR CORPORATION

Defendant.

Declaration of Steven A. Reiss

1. I, Steven A. Reiss, am a partner at the law firm of Weil, Gotshal & Manges LLP, counsel for Schindler Elevator Corporation ("Schindler") in the above captioned matter. I submit this declaration in support of Schindler's Motion to Dismiss. I am a member of the New York State Bar and admitted in the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit.

2. Annexed hereto as Exhibit A is a true and correct copy of the Complaint, dated June 21, 2007, filed in the above captioned matter.

3. Annexed hereto as Exhibit B is a true and correct copy of the *Notification of Results of Investigations*, OFCCP Complaint No.: I00119824, dated February 7, 2005.

4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2007
New York, NY

/s/ _____
Steven A. Reiss

APPENDIX D — EXHIBIT A TO REISS DECLARATION—AMENDED COMPLAINT, DATED JUNE 21, 2007

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

05 Civ. 2917 (SHS)(KNF)

UNITED STATES OF AMERICA
Ex REL. DANIEL KIRK,

PLAINTIFFS,

- AGAINST -

SCHINDLER ELEVATOR CORPORATION,

DEFENDANT.

AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL FALSE CLAIMS ACT, 31 U.S.C. §3729 et seq.

Plaintiff Daniel Kirk, by his attorney Jonathan A. Willens LLC, on behalf of the United States of America, for his Amended Complaint against defendant Schindler Elevator Corporation, based upon his personal knowledge and relevant documents, alleges as follows.

I. INTRODUCTION

1. This is an action to recover damages and civil penalties on behalf of the United States of America arising from false and/or fraudulent records and claims

presented by defendant Schindler Elevator Corporation and/or its subsidiaries, agents, employees and co-conspirators (collectively, "Schindler") in violation of the Federal Civil False Claims Act, 31 U.S.C. § 3729 *et seq.*, as amended.

2. Since at least March 1999, Schindler has submitted hundreds of claims to agencies of the United States government seeking payment for construction services relating to the manufacture, installation and maintenance of elevators and escalators in public buildings. As alleged in detail below, those claims were false.

3. Schindler's major contracts with the government are subject to the Vietnam Era Veterans Readjustment Assistance Act, 38 U.S.C. § 4212 ("VEVRAA"). Pursuant to VEVRAA, Schindler was required (a) to adopt an affirmative action program for Vietnam-era veterans, (b) to offer its employees an invitation to identify themselves as Vietnam-era veterans separate from any other personnel form or questionnaire, and (c) to submit annual reports, known as VETS-100 reports, to the U.S. Department of Labor.

4. During the period from March 1999 to the present, Schindler failed to meet these requirements. It had no affirmative action program for veterans and did not ask its employees to identify themselves as veterans. Most important, according to information provided to Mr. Kirk by the Department of Labor, Schindler failed to file the required VETS-100 reports for any of its business units until late 2004.

5. When *qui tam* plaintiff Daniel Kirk complained to the U.S. Department of Labor about this non-compliance, Schindler belatedly filed incomplete VETS-100 reports for the year ending September 30, 2004. However, Schindler filed these VETS-100 reports with the Department of Labor *knowing that they are false.* The reports submitted by Schindler purport to cover its entire workforce in New York and New Jersey, yet they assert that not one of the craftsmen, technicians or salesmen employed by Schindler in those states is a Vietnam-era veteran. More recently, Schindler filed false VETS-100 reports for the years ending in September of 2002, 2005 and 2006.

6. Daniel Kirk - who is himself a Vietnam-era veteran employed by Schindler in New York City until 2003 - knows that the information contained in these VETS-100 reports is false. He also knows that Schindler did not take any steps to identify those employees who are veterans entitled to protection under the VEVRAA. Without that information, Schindler could not file accurate VETS-100 reports.

7. In 1998, Congress amended 31 U.S.C. § 1354 to prohibit any agency of the United States from obligating or expending funds for any fiscal year on a contract subject to VEVRAA with a contractor who failed to submit a VETS-100 report for that fiscal year.

8. Despite that clear prohibition, Schindler submitted bids for contracts and claims for payment knowing that it was not eligible either to enter into contracts or to collect payments because it had not

complied with the VETS-100 reporting requirement. Schindler also allowed itself to be listed as an eligible contractor by the Department of Labor, knowing that it had failed to file VETS-100 forms or otherwise to comply with the requirements of VEVRAA.

9. On information and belief, from 1999 to the present, Schindler entered into contracts with the United States worth more than $100 million. During that period, the United States has paid Schindler millions of dollars to which it was not entitled, because Schindler falsely certified that it was in compliance with VEVRAA. When Daniel Kirk brought this situation to the attention of the Department of Labor, Schindler filed *false* VETS-100 forms in a desperate attempt to bring itself into compliance and maintain its eligibility for government contracts.

10. Under the False Claims Act, each of the requests for payment submitted by Schindler is a false claim. Schindler is liable to the United States for up to $11,000 for each payment request. In addition, the government is entitled to treble damages for funds paid to Schindler on the basis of these false claims.

II. THE PARTIES

11. Relator Daniel Kirk is a United States citizen residing in New Jersey. He was employed by Schindler in its Manhattan office at 620 12th Avenue until his resignation in August 2003. At that time, Mr. Kirk was Schindler's Regional Modernization Manager for New

York City and Long Island. He has direct and independent knowledge of the fraud alleged in this action.

12. Defendant Schindler Elevator Corporation is a Delaware Corporation with offices throughout the United States, including 620 12th Avenue in Manhattan. Schindler is an indirect subsidiary of Schindler Holding Limited, a Swiss conglomerate that is the world's second largest manufacturer of elevators and escalators. From 1989 to 2002, Schindler owned Millar Elevator Industries, Inc. ("Millar") and operated Millar as an independent entity. In 2002, Millar was merged into Schindler.

13. At all times material to this complaint, Schindler has provided construction and maintenance services under contract to various agencies of the United States, including without limitation the Department of Defense (including separate contracts for the Pentagon, the Army and the Navy), the Department of Veterans Affairs, the Smithsonian Institution, the Internal Revenue Service, the Nuclear Regulatory Commission, the General Services Administration and the United States Postal Service.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345.

15. This Court has personal jurisdiction over the defendants pursuant to 31 U.S.C. § 3732(a) because that section authorizes nationwide service of process. Moreover, Schindler maintains offices within the Southern District of New York.

16. Venue is proper in this district pursuant to 28 U.S.C. § 1339(b) and 31 U.S.C. § 3732(a) because Schindler can be found in this district.

17. All conditions precedent to the initiation or maintenance of this action have been performed or have occurred.

18. The relator, Daniel Kirk, has retained the undersigned attorney to represent him in this action and is obligated to pay his attorney a reasonable fee for his services.

IV. BACKGROUND

19. Daniel Kirk has worked in the elevator business since 1968, when he joined Otis Elevator Company as an apprentice. In 1978, he took a job at Millar as a journeyman elevator mechanic. He was promoted to Field Supervisor in the Maintenance Department in 1985, and in 1990 he was promoted to Manager of the Repair and Maintenance Support Departments. As manager, he was responsible for the profitability of his departments as well as for the supervision of two supervisors and 44 employees. From 1991 to 2000, Mr. Kirk continued to receive salary increases and incentive

awards based on exemplary performance evaluations. He was promoted to Vice President of Millar in November 2001, responsible for the Modernization, Repair and Maintenance Support departments. In that position, he supervised over 100 employees.

20. In 1989, Schindler acquired Millar. The two companies continued to operate separately until 2002. During that period, Millar contracted with the United States on many projects using its own name.

21. In 2002, Millar was integrated into the parent company, Schindler Elevator Corporation. As the two companies were combined, Mr. Kirk was named Schindler's Regional Modernization Manager for New York City and Long Island. In that position, he had the challenging job of merging the Modernization Departments of Schindler and Millar into one, while managing over one hundred employees.

22. The integration of Millar and Schindler resulted in a substantial reorganization. Approximately 400 Millar employees in New York were terminated and then hired as new employees by Schindler. Many employees of both companies were demoted or terminated.

23. During his 25-year career with Millar and Schindler, Mr. Kirk acquired a well-deserved reputation in the industry as a highly effective and respected manager with stellar performance evaluations throughout his entire career. He received incentive bonuses each year through 2003.

24. In June 2003, Mr. Kirk discovered that Schindler was spreading false rumors throughout the company and the entire New York City elevator industry that Mr. Kirk had been fired for poor performance. Then in mid-July 2003, Mr. Kirk discovered that he had been demoted, without explanation or notice, to the non-managerial position of Field Superintendent. Mr. Kirk realized that he was being forced out of the company. As a result of these actions by Schindler, Mr. Kirk resigned on or about August 5, 2003.

25. Mr. Kirk served in the United States Army on active duty from August 1969 to August 1971. He was stationed first in Germany then in Vietnam from November 1970 to August 1971 serving with the U.S. Army 5th Mechanical Artillery Corp in communication support as a radio teletype operator with top secret clearance. He attained the rank of Spec 4 and was stationed in the Quantri fire base just under the DMZ in South Vietnam. Thereafter, he served in the U.S. Army Reserve through August 26, 1975. As a result of this service, Mr. Kirk is a covered veteran under VEVRAA.

26. Under VEVRAA and its implementing regulations, all non-exempt federal contractors are required to gather information about their employees' veteran status. As explained below, Federal Acquisition Regulations set forth a detailed procedure for "self-identification" by employees. However, while he was employed by Schindler, Mr. Kirk was never asked to identify himself as a veteran to any employee or officer of Schindler.

Appendix D

27. From 1998 to the present, Schindler never asked current employees of Schindler or Millar to self-identify. As a result, Schindler did not have the information necessary to file accurate VETS-100 forms, as required by VEVRAA.

28. VEVRAA also requires employers to adopt affirmative action programs for their covered veteran employees. Mr. Kirk was employed by Schindler as a manager supervising over 100 employees, with responsibility for hiring, firing and promotion of those employees. He was never informed of any affirmative action program for veterans at Schindler. He was never provided any instruction in handling personnel decisions with respect to hiring, firing or promoting veterans. More recently, Mr. Kirk has obtained a copy of Schindler's employee manual, which makes no reference to any affirmative action program for veterans.

29. In short, Schindler has no affirmative action plan for veterans and did not have one during Mr. Kirk's employment at Schindler from 1989 to 2003. On information and belief, Schindler did not adopt or implement an affirmative action program at any time.

30. In November 2004, Mr. Kirk's wife, Linda Kirk, submitted a Freedom of Information Act request to the Department of Labor for copies of any VETS-100 reports filed by Schindler in 2002, 2003 or 2004.

31. In a letter dated February 11, 2005, the Office of the Assistant Secretary for Veterans Employment and

Training responded to Mrs. Kirk's FOIA request. The letter stated that the Labor Department had located no VETS-100 reports for the years 2002 or 2003.

32. The letter attached redacted copies of three VETS-100 reports, all dated September 30, 2004, covering different business units of Schindler. (A copy of these reports is attached hereto as Exhibit A.) As explained in detail below, these reports are patently false.

33. In light of the Labor Department's letter and Schindler's failure to ask its employees to self-identify as required by VEVRAA, it is apparent that Schindler did not submit timely VETS-100 reports for the fiscal years 2002 or 2003.

34. On information and belief, Schindler never filed a VETS-100 report before September 30, 2004. On information and belief, none of Schindler's subsidiaries and affiliates in the United States, including Millar, filed a VETS-100 report before September 30, 2004.

35. In January 2005, Mrs. Kirk submitted a second Freedom of Information Act request to the Department of Labor for copies of any VETS-100 reports filed by Schindler for the years 1998 through 2001. In September 2005, the Office of the Assistant Secretary for Veterans Employment and Training responded that the Labor Department had located no VETS-100 reports for the years 1998, 1999 or 2000.

Appendix D

36. In the same letter, the Department of Labor provided a collection of VETS-100 reports ("the 2002 Reports") for Schindler covering the 12-month period ending September 30, 2002. Based on the Department of Labor's discovery of these reports between January and September 2005, it appears that Schindler submitted the 2002 Reports more than two years after they were legally required to be filed. As explained below, the 2002 Reports are false and incomplete.

37. In April 2007, Mrs. Kirk submitted a third FOIA request to the Department of Labor for copies of any VETS-100 reports filed by Schindler for the years 2005 and 2006. In May 2007, the Office of the Assistant Secretary for Veterans Employment and Training provided copies of certain VETS-100 reports submitted by Schindler for the years ending September 30, 2005 and September 30, 2006.

38. As explained below, Schindler's VETS-100 reports for 2005 and 2006 are false and incomplete.

39. On or about April 15, 2004, Mr. Kirk filed a complaint with the Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") alleging that he was improperly demoted and constructively terminated by Schindler despite his status as a Vietnam era veteran. In May or June 2004, OFCCP provided Schindler a copy of the complaint and began an investigation of Schindler's compliance with VEVRAA.

40. As a result of the investigation into Mr. Kirk's complaint, Schindler filed VETS-100 reports for the first time on or about September 30, 2004. *See* Exhibit A.

41. In a decision dated February 7, 2005, OFCCP denied Mr. Kirk's complaint, finding that there was insufficient evidence to conclude that his demotion and termination from Schindler were motivated by his status as a Vietnam-era veteran. OFCCP found that Mr. Kirk is a covered Vietnam-era veteran under VEVRAA, and that Schindler is a non-exempt government contractor subject to the Act. However, without any support in the record, OFCCP found that Schindler had filed timely VETS-100 forms for its New York and New Jersey offices, and that it had adopted an affirmative action program. These findings are currently on appeal before the Director of OFCCP's Northeast Region.

V. APPLICABLE LAW

A. The False Claims Act

42. The False Claims Act ("FCA"), 31 U.S.C. § 3729, *et seq.*, was originally enacted during the Civil War and substantially amended in 1986. Congress passed the 1986 amendments to enhance and modernize the government's tools for recovering losses sustained by frauds against it. The amendments were intended to create incentives for individuals with knowledge of fraud against the government to disclose the information without fear of reprisals or government inaction, and to encourage the private bar to commit resources to prosecuting fraud on the government's behalf.

Appendix D

43. The FCA provides that any person who knowingly submits, or causes the submission of, a false or fraudulent claim to the U.S. Government for payment or approval is liable for a civil penalty of up to $11,000 for each such claim, plus three times the amount of the damages sustained by the Government. Liability attaches when a defendant knowingly seeks payment, or causes others to seek payment, from the Government that is unwarranted.

44. A claim for payment under a contract with the federal government is false or fraudulent if the contractor is not eligible for payment under the terms and conditions of the contract. Schindler was not eligible for payment under any contract subject to VEVRAA because (a) the requirements of VEVRAA were incorporated into each contract, (b) Schindler failed to meet those requirements, and (c) the contracting agencies of the United States were prohibited by law and regulation from making payments to non-exempt contractors who failed to comply with VEVRAA.

45. The FCA allows any person having information about a false or fraudulent claim against the Government to bring an action for himself and the Government, and to share in any recovery. The FCA requires that the complaint be filed under seal for a minimum of 60 days (without service on the defendant during that time) to allow the Government time to conduct its own investigation and to determine whether to join the suit.

Appendix D

B. The Vietnam Era Veterans Readjustment Assistance Act

46. Since 1972, Congress has imposed requirements on federal contractors to encourage the hiring, retention and promotion of certain groups of military veterans, including those who served in Vietnam. In its current form, VEVRAA provides, in part: "Any contract in the amount of $100,000 or more entered into by any department or agency of the United States for the procurement of personal property and nonpersonal services (including construction) for the United States, *shall contain a provision requiring that the party contracting with the United States take affirmative action to employ and advance in employment qualified covered veterans.*" 38 U.S.C. § 4212(a)(1) (emphasis added).

47. The $100,000 minimum was enacted in 2002, but did not take effect until September 28, 2006. For contracts signed between November 13, 2001 and September 28, 2006, VEVRAA applied to contracts in the amount of $25,000 or more. For contracts signed before November 13, 2001, the minimum amount was $10,000. *See* 66 FR 51998-01 (Oct. 11, 2001); 71 FR 57369 (Sept. 28, 2006).

48. In addition to this affirmative action requirement, Congress directed the Secretary of Labor to issue regulations requiring contractors to list their job openings with state employment services. 38 U.S.C. § 4212(a)(2).

Appendix D

49. To ensure that the Department of Labor has the information needed to monitor compliance with VEVRAA, Congress required each federal contractor to report the number of "qualified covered veterans" that it employs, as well as the number of such veterans hired during the reporting period:

> Each contractor to whom subsection (a) applies shall, in accordance with regulations which the Secretary of Labor shall prescribe, report at least annually to the Secretary of Labor on—
>
> (A) the number of employees in the workforce of such contractor, by job category and hiring location, and the number of such employees, by job category and hiring location, who are qualified covered veterans;
>
> (B) the total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are qualified covered veterans; and
>
> (C) the maximum number and the minimum number of employees of such contractor during the period covered by the report.

38 U.S.C. § 4212(d). These reports are known as "VETS-100" reports.

Appendix D

50. In 1998, Congress passed the Veterans Employment Opportunities Act. Among other things, the act expanded the scope of VEVRAA to cover a broader group of veterans. *See* PL 105-339, 112 Stat 3182 (October 31, 1998). It also required the Department of Labor to maintain a database of contractors who complied with the reporting requirements of VEVRAA. Finally, Congress prohibited federal agencies from paying any contractor subject to VEVRAA who failed to file a VETS-100 report:

> (1) Subject to paragraph (2), *no agency may obligate or expend funds* appropriated for the agency for a fiscal year to enter into a contract described in section 4212(a) of title 38 with a contractor from which a report was required under section 4212(d) of that title with respect to the preceding fiscal year *if such contractor did not submit such report.*
>
> (2) Paragraph (1) shall cease to apply with respect to a contractor otherwise covered by that paragraph on the date on which the contractor submits the report required by such section 4212(d) for the fiscal year concerned.

31 U.S.C. § 1354(a) (emphasis added).

51. *The Implementing Regulations.* The Labor Department Office of Veterans' Employment and Training developed the VETS-100 report (officially known as the Federal Contractor Veterans' Employment

Report) for transmitting the information required by VEVRAA to the government. The report must be submitted annually by September 30. All employers doing business at more than one hiring location must file (1) a report covering the principal or headquarters office, (2) a separate report for each hiring location employing 50 or more persons; and (3) either a separate report for each hiring location employing fewer than 50 persons, or consolidated reports, by state, covering the hiring locations within the state having fewer than 50 employees. Each consolidated report must also list the name and address of all hiring locations covered by the report. 41 C.F.R. §§ 61-250.10, 61-250.11.

52. The information provided on the VETS-100 form must be obtained through voluntary disclosure from employees and applicants. Each contractor must invite all veterans of the Vietnam era and other covered veterans to identify themselves. The invitation must state that any information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with regulations.

53. Pursuant to section 52.222-37 of the Federal Acquisition Regulations ("FAR"), this self-identification procedure is mandated by every federal contract for services and acquisitions covered by VEVRAA. 48 C.F.R. § 52.222-37. This requirement has been in effect at all times material to this complaint. Similar requirements

were promulgated by the Department of Labor. 41 C.F.R. § 60-250.42; 41 C.F.R. § 61-250.12 (deleted July 2001)

54. In October 2001, the Department of Defense and the General Services Administration issued a final rule amending FAR to implement the Veterans Employment Opportunities Act of 1998. *See* 66 FR 53487-01 (Oct. 22, 2001). The final rule implemented the legislative prohibition on payments to contractors who fail to comply with their obligations under VEVRAA:

> *Policy.* (a) Contractors and subcontractors, when entering into contracts or subcontracts subject to the Act, must –
>
> (1) List all employment openings, with the appropriate local employment service office except for (i) Executive and top management positions; (ii) Positions to be filled from within the contractor's organization; and (iii) Positions lasting three days or less.
>
> (2) Take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based on their disability or veteran's status.
>
> (b) Except for contracts for commercial items or contracts that do not exceed the simplified

> acquisition threshold, *contracting officers must not obligate or expend funds* appropriated for the agency for a fiscal year to enter into a contract for the procurement of personal property and nonpersonal services (including construction) *with a contractor that has not submitted a required annual Form VETS-100,* Federal Contractor Veterans' Employment Report (VETS-100 Report), with respect to the preceding fiscal year if the contractor was subject to the reporting requirements of 38 U.S.C. 4212(d) for that fiscal year.

48 C.F.R. § 22.1302; FAR § 22.1302 (emphasis added). As a result of this final rule, all non-exempt military and civilian contracts with the United States were amended to include these requirements.

55. In addition, the final rule added a new provision requiring companies making offers to contract with the United States to certify that, if they are subject to the reporting requirements of VEVRAA, they have not failed to file the most recent required VETS-100 form. In particular, on and after the effective date of December 21, 2001, companies were required to insert the following statement pursuant to FAR 52.222-38:

> *Compliance with Veterans' Employment Reporting Requirements.* By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C.

42 12(d) (i.e., if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 Report required by that clause.

VI. SPECIFIC ALLEGATIONS

A. Violations of VEVRAA

56. At all times since at least 1998, Schindler has been subject to the requirements of VEVRAA and its implementing regulations. Among other things, Schindler was required (a) to adopt and implement an affirmative action program for Vietnam-era veterans, (b) to offer its employees an opportunity to identify themselves as Vietnam-era veterans, and (c) to submit annual VETS-100 reports to the U.S. Department of Labor.

57. In violation of VEVRAA, Schindler failed to adopt and implement an affirmative action program. Its "Policies and Procedures" manual dated June 2002 contains no mention of any policy with respect to the hiring or promotion of veterans. During his employment at Schindler, Mr. Kirk was never informed of any such policy. Even though he was responsible for employment decisions in his department, Mr. Kirk received no direction concerning the hiring or promotion of veterans.

58. In violation of VEVRAA, Schindler failed to offer its employees an opportunity to identify themselves as Vietnam-era veterans. Mr. Kirk and other veterans employed by Schindler did not receive the self-identification forms used to gather information required by VEVRAA, and were never asked to provide that information.

59. When Schindler acquired Millar in 1989, and when former Millar employees were hired by Schindler in 2002, Schindler did not make the required effort to determine who was entitled to protection under VEVRAA. Specifically, Schindler did not ask the approximately 400 former Millar employees to self-identify in 2002 or thereafter.

60. In violation of VEVRAA, Schindler did not submit VETS-100 reports to the Department of Labor or any other agency of the United States government from at least 1998 until late 2004.

61. Schindler filed three VETS-100 reports with the Department of Labor on or about September 30, 2004. Copies of those reports (the "2004 Reports"), with certain information redacted by the Department of Labor, are attached hereto as Exhibit A.

62. The 2004 Reports purport to cover three different parts of Schindler's operations in the United States. The first report covers the company headquarters in New Jersey. The second report covers 14 unspecified locations in New York engaged in

elevator installation and modernization or repair, as denoted by the NAICS code 235990. The third report covers four unspecified locations in New Jersey engaged in elevator manufacturing, as denoted by the NAICS code 333921.

63. The 2004 Reports do not satisfy the requirements of VEVRAA and its implementing regulations. Among other things:

(a) Schindler failed to file a separate report for each hiring location employing 50 or more persons. The office where Mr. Kirk was a manager, 620 12th Avenue in New York City, employed more than 50 persons, but Schindler did not file a separate report for that office.

(b) Schindler failed to identify the name and address of all hiring locations covered by the second and third of the 2004 Reports. One of these reports covers four locations and the other covers 14 locations, but none of these locations is identified.

(c) The 2004 Reports cover only 18 unspecified locations in New York and New Jersey and the company headquarters in New Jersey. Schindler operates far more than 18 locations in the United States. Therefore, Schindler did not file VETS-100 reports for hiring locations outside of New York and New Jersey.

64. The 2004 Reports are false because they grossly understate the number of Vietnam-Era Veterans and other veterans covered by VEVRAA who are employed

by Schindler. In particular, the second report – the one that covers 14 locations in New York – falsely reports that Schindler has (a) no covered veterans who are technicians, (b) no covered veterans who are sales workers, (c) no covered veterans who are craft workers, (d) no covered veterans who are semi-skilled operatives, and (e) no covered veterans who are unskilled workers.

65. Relator Daniel Kirk personally knows many covered veterans employed by Schindler in New York City who should have been reported as technicians, craft workers or one of the other categories in the 2004 Reports. These veterans include, without limitation, John McNutt, Russ Macaluso, Robert "Monty" Montato, Joseph Silva, Amando Medera and John Gutowski.

66. On information and belief, the third of the 2004 Reports is also false because it reports (a) no covered veterans who are technicians, (b) no covered veterans who are sales workers, (c) no covered veterans who are craft workers, (d) no covered veterans who are semiskilled operatives, and (e) no covered veterans who are unskilled workers.

67. Schindler operates manufacturing facilities in the United States, including plants in North Carolina, Pennsylvania and Ohio. These facilities employ many Vietnam-era veterans who should have been counted in this VETS-100 report, including craft workers, technicians and semi-skilled operatives.

Appendix D

68. The third of the 2004 Reports purports to count the number of veterans employed in four locations where Schindler manufactures elevators and escalators. The report also purports to cover four locations in New Jersey. These statements are inconsistent, because Schindler does not have manufacturing facilities in New Jersey. Therefore, the third report is false.

69. At all times material to this complaint, Schindler did not ask Mr. Kirk or any other current employee to self-identify for purposes of VEVRAA. As a result, any VETS-100 report filed by Schindler is false because the company failed to collect the information needed to submit an accurate report.

70. Because it lacked the data necessary to file accurate reports, Schindler should have responded to Mr. Kirk's OFCCP complaint by acknowledging its non-compliance with VEVRAA. Instead, Schindler attempted to cover-up its violations by filing the false reports attached as Exhibit A.

71. Sometime in 2005, Schindler submitted the 2002 Reports to the Department of Labor. Those reports are false. They fail to identify any hiring locations, as required by law, and they do not include required information concerning new hires (line 10) and the number of permanent employees at each site. Most important, the form covering nine New York locations lists *zero* Vietnam veterans among the technicians, sales workers, craft workers and operatives. Mr. Kirk was employed by Schindler in 2002, and he knows many Vietnam veterans who should have been counted in these categories.

72. Thereafter, Schindler submitted VETS-100 reports for 2005 and 2006 to the Department of Labor. These forms are false. Among other things, the forms for 2005 and 2006 covering all New York locations list *zero* Vietnam veterans among the technicians, sales workers, craft workers and operatives.

B. False Claims

73. On information and belief, Schindler submitted claims for payment on all of its contracts with the government during the period covered by this complaint, March 1999 to the present.

74. At all times during this period, Schindler was in violation of VEVRAA and was not eligible for payment for material or services provided to the government pursuant to any contract exceeding the minimum amount specified in the Act.

75. Even while it was in violation of VEVRAA, Schindler expressly certified to the United States that it was in compliance with the Act. Schindler certified its compliance in each contract with the United States subject to VEVRAA, including those listed in Exhibits A through F hereto, and in offers for such contracts.

76. Each claim for payment that Schindler made, or caused to be made, for payment from any agency of the United States, at any time material to this action, for material or services provided to the government pursuant to any contract exceeding the minimum

amount specified in the Act or its implementing regulations, was a false claim submitted in violation of the False Claims Act.

77. Such false claims include claims for payment submitted directly by Schindler or any of its subsidiaries or affiliates, including Millar, to an agency of the United States.

78. Such false claims also include claims for payments submitted by any contractor to an agency of the United States that included funds due to Schindler for work on contracts covered by VEVRAA, including projects where Schindler acted as subcontractor.

79. In addition to claims for payment, Schindler also submitted offers to the government that falsely certified Schindler's compliance with VEVRAA. Schindler made these false statements to induce the government to enter into contracts for which Schindler was ineligible because it had not, in fact, complied with VEVRAA. In particular, Schindler submitted offers containing false statements to induce the United States to enter into each of the contracts listed in Exhibits B through F hereto.

80. As a result of these false offers, Schindler was permitted to enter into contracts with the United States in violation of VEVRAA, the Veterans Employment Opportunities Act of 1998, the Federal Acquisition Regulations and other applicable regulations.

Appendix D

81. *Specific Contracts.* During the period covered by this complaint, Schindler has entered into hundreds of contracts with the United States that exceed the minimum amounts provided by VEVRAA. Relator Daniel Kirk does not have access to these contracts or to any comprehensive list of Schindler's contracts with the government.

82. Attached as Exhibit B is a partial list of contracts exceeding $10,000 that Schindler entered into with an agency of the United States between April 1, 1999 and November 13, 2001. Each of these contracts was subject to VEVRAA. Each claim for payment submitted by or on behalf of Schindler was a false claim.

83. Attached as Exhibit C is a partial list of contracts exceeding $10,000 that Millar, a subsidiary of Schindler, entered into with an agency of the United States between April 1, 1999 and November 13, 2001. Each of these contracts was subject to VEVRAA. Each claim for payment submitted by or on behalf of Millar was a false claim.

84. Attached as Exhibit D is a partial list of contracts exceeding $25,000 that Schindler entered into with an agency of the United States between November 13, 2001 and September 28, 2006. Each of these contracts was subject to VEVRAA. Each claim for payment submitted by or on behalf of Schindler was a false claim.

85. Attached as Exhibit E is a partial list of contracts exceeding $25,000 that Millar, a subsidiary of Schindler,

entered into with an agency of the United States between November 13, 2001 and September 28, 2006. Each of these contracts was subject to VEVRAA. Each claim for payment submitted by or on behalf of Millar was a false claim.

86. Attached as Exhibit F is a partial list of contracts exceeding $100,000 that Schindler entered into with an agency of the United States between September 28, 2006 and the present. Each of these contracts was subject to VEVRAA. Each claim for payment submitted by or on behalf of Schindler was a false claim.

87. In addition, Schindler and/or Millar entered into contracts exceeding the minimum amount provided by VEVRAA with the United States Postal Service between March 1999 and the present. These contracts include, without limitation, contracts for the renovation of the Post Offices located at 90 Church Street and 341 Ninth Avenue, both in Manhattan. Each claim for payment under these contracts was a false claim.

Count I

False Claims Act 31 U.S.C. §§ 3729(a)(1) and (a)(2)

88. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 87 of this Complaint.

89. This is a claim for treble damages and penalties under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, as amended.

Appendix D

90. By virtue of the acts described above, Schindler knowingly presented or caused to be presented, false or fraudulent claims to the United States Government for payment or approval.

91. By virtue of the acts described above, Schindler knowingly made, used, or caused to be made or used false or fraudulent records and statements, and omitted material facts, to induce the Government to approve and pay such false or fraudulent claims.

92. Each claim for payment that Schindler submitted to an agency of the United States seeking payment on a contract subject to VEVRAA that Schindler induced the United States to enter by submitting an offer in violation of FAR 52.222-38 represents a false or fraudulent claim for payment.

93. Each claim for payment that Schindler submitted to an agency of the United States seeking payment on a contract subject to VEVRAA for a fiscal year when it had not filed an accurate VETS-100 form represents a false or fraudulent claim for payment. This includes each claim for payment in connection with the contracts identified in Exhibits B through F hereto.

94. Each false claim was submitted by Schindler or on behalf of Schindler to an employee of the United States. On information and belief, each false claim was submitted to an officer of the contracting agency responsible for paying contractors from funds of the United States obligated for that purpose.

95. Plaintiff cannot at this time identify all of the false claims for payment that were caused by Schindler's conduct. The false or fraudulent claims were presented by Schindler and its subsidiaries or affiliates directly to agencies of the United States. Plaintiff has no control over or dealings with such entities and has no access to the records in their possession.

96. The United States, unaware of the falsity of the records, statements and claims made or caused to be made by Schindler, paid and continues to pay the claims that would not be paid but for defendant's illegal practices.

97. Under 31 U.S.C. § 1354 and applicable regulations, the contracting agencies were prohibited from paying these claims, and would not have done so if Schindler had not falsely certified that it had filed VETS-100 forms, or if Schindler had not filed false VETS-100 forms in late 2004 and thereafter to cover up its continuing ineligibility for such payments.

98. On information and belief, the value of all contracts covered by VEVRAA between Schindler and the United States exceeds $100 million. By reason of Schindler's acts, the United States has been damaged, and continues to be damaged, in an amount equal to all payments made by the United States pursuant to such contracts, with the exact amount to be determined at trial.

Appendix D

WHEREFORE, relator Daniel Kirk, for and on behalf of the United States, prays for judgment against the defendants as follows:

1. that Schindler cease and desist from violating 31 U.S.C. § 3729, *et seq.*;

2. that this Court enter judgment against Schindler in an amount equal to three times the amount of damages the United States has sustained because of defendant's actions, plus a civil penalty of not less than $5,500 and not more than $11,000 for each violation of 31 U.S.C. § 3729;

3. that the relator be awarded the maximum amount allowed pursuant to section 3730(d) of the federal False Claims Act;

4. that the relator be awarded all costs of this action, including attorney's fees and expenses; and

5. that the relator recover such other relief as the Court deems just and proper.

Appendix D

Demand for Jury Trial

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, relator Daniel Kirk hereby demands a trial by jury.

Dated: June 21, 2007

By: /s/

Jonathan A. Willens (JW-9180)
JONATHAN A. WILLENS LLC
217 Broadway, Suite 707
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Attorney for Qui Tam Plaintiff Relator Daniel Kirk

Appendix D

Exhibit A to Complaint-
Schindler's VETS-100 Federal Contractor Report, dated September 30, 2004 ..... SA-1

Exhibit B to Complaint-
Schindler Elevator Contracts 1999 through 2001 ..... SA-5

Exhibit C to Complaint-
Millar Elevator Contracts 1999 through 2001 ..... SA-24

Exhibit D to Complaint-
Schindler Elevator Contracts 2002 through 2006 ..... SA-29

Exhibit E to Complaint-
Millar Elevator Contacts 2002 through 2006 ..... SA-51

Exhibit F to Complaint-
Schindler Elevator Contracts 2007 ..... SA-53

Appendix D

Exhibit B to Reiss Declaration-
Notification of Results of Investigation,
dated February 7, 2005 ..... SA-55

APPENDIX E — AFFIDAVIT OF DANIEL E. KIRK, JR., PLAINTIFF, IN OPPOSITION TO MOTION TO DISMISS THE COMPLAINT, DATED SEPTEMBER 27, 2007

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

05 Civ. 2917 (SHS)(KNF)

UNITED STATES OF AMERICA
EX REL. DANIEL KIRK,

PLAINTIFFS,

- AGAINST -

SCHINDLER ELEVATOR CORPORATION,

DEFENDANT.

AFFIDAVIT OF PLAINTIFF-RELATOR DANIEL E. KIRK, JR.

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

Daniel E. Kirk, Jr., being duly sworn, declares under penalty of perjury as follows:

1. My full name is Daniel Edward Kirk, Jr. I am the plaintiff and qui tam relator in this action. I submit this

affidavit in opposition to Schindler's motion to dismiss the complaint. The information in this affidavit is based on my personal knowledge.

2. The complaint alleges that, since at least 1999, Schindler has falsely certified to many federal government agencies that it is in compliance with the Vietnam Era Veterans Readjustment Assistance Act, 38 U.S.C. § 4212 ("VEVRAA"). Because compliance with VEVRAA is a prerequisite to eligibility and payment for many government contracts, Schindler has violated the federal False Claims Act.

3. For many years, Schindler has forced out of the company military veterans who were approaching retirement age. Many veterans who should be protected by VEVRAA are demoted or transferred. These actions often lead these veterans to resign and forfeit the retirement benefits that they had earned after many years as Schindler employees. This is the type of conduct that Congress tried to stop when it passed VEVRAA and the Veterans Employment Opportunities Act of 1998, which prohibited federal agencies from paying any contractor subject to VEVRAA who failed to file a VETS-100 report as required by law. Schindler is able to get away with these cost-cutting efforts because it does not have an affirmative action plan to protect veterans as required by VEVRAA, and because it does not accurately report to the government the number of covered veterans employed by the company. If Schindler wants to continue earning millions of dollars from government contracts, it must stop this illegal conduct.

Appendix E

Employment History

4. I have worked in the elevator industry in New York City from 1968 to the present, except for the period between 1969 and 1971 when I served in the U.S. Army in Germany and Vietnam. Beginning in 1978, I was employed by Millar Elevator Industries, Inc. In 1989, Schindler acquired Millar from Westinghouse.

5. I was named manager of the Repair and Maintenance Support Departments of Millar in 1990 with full responsibility for hiring, promoting and firing employees in those departments. I was again promoted to Vice President of Millar in November 2001 and was responsible for the Modernization, Repair and Maintenance Support Departments and for the supervision of over 100 employees in those departments.

6. In 2002, Millar was integrated into the parent company, Schindler Elevator Corporation. Schindler hired all employees of the former Millar Elevator Industries, Inc. In 2002-2003, as Regional Modernization Manager for New York and Long Island, I handled manpower decisions for over 100 employees.

7. As a manager, I was often sent away from New York to attend various manager meetings, training seminars and "Mod Blitzes" (national Schindler modernization meetings) with Schindler managers from around the country. Specifically, I was sent to Toledo, Ohio; San Diego, California; Atlantic City, New Jersey; San Destin, Florida; Erie, Pennsylvania and Uncasville,

Connecticut. In spring 2003, I attended two Mod Blitzes together with all of Schindler's Modernization Managers from around the country in Las Vegas, Nevada and Fort Lauderdale, Florida. My wife, Linda Kirk accompanied me on these trips and was invited to join the group for dinner on several occasions by Schindler's Vice President of Modernization, Monte Lukov.

8. As a result of these trips and other activities, I was generally familiar with Schindler's policies, practices and procedures across the country, not just in New York. I was aware of the type of work performed at various Schindler facilities and the categories of employees working in different regions of the country. I knew that many Schindler facilities were bidding for contracts and working on projects for various agencies of the federal government. I was also briefed on company personnel practices. If Schindler had adopted an affirmative action plan for military veterans, or a process for employees to identify themselves as veterans, I would have known about it.

9. In May 2003, I was falsely blamed for the purported overruns attributed to the Modernization Department. Beginning in June 2003, Schindler circulated rumors throughout the company and the elevator industry that I had been fired. My title in the company online phone directory was changed to a non-managerial position in July 2003 before I was told of the demotion. I was not offered any other managerial position within the corporation.

10. In August 2003, I submitted my voluntary resignation. Although I had been employed with the company for 25 years, Schindler denied my request for a severance package because Schindler claimed that I had resigned and had not been fired.

11. I am currently employed as a Senior Manager by Transel Elevator and Electric Corporation in New York City.

Other Litigation

12. In August 2003, I commenced a lawsuit against Schindler in state court seeking severance pay and compensation for damages arising from constructive discharge, defamation of character and breach of contract. Schindler removed the action to this Court, where my ERISA claims were dismissed and the action was remanded to state court.

13. After joining Transel, I attempted to have my electrician's license transferred from Schindler to Transel. However, by December 2003, I discovered that I could not transfer my license because Schindler had incurred over $14,000 in violations, penalties and fees imposed by the New York City Department of Buildings. City regulations required that those violations, penalties and fees be satisfied by Schindler before the license could be properly transferred.

14. I achieved some relief in state court. On March 20, 2006, Justice Jane S. Solomon determined that

Schindler's unpaid fees and fines were preventing me from clearing my electrician's license. Over the next few months, Schindler paid the fees it owed to the city and cleared its violations. More than three years after I left Schindler, the Electrical Board finally restored my license in November 2006. Justice Solomon dismissed my remaining claims, and the case is now on appeal.

15. I mention these facts because Schindler is attempting to paint me as a litigious, disgruntled employee. On the contrary, I have a legitimate dispute with Schindler concerning my termination, and I was forced to go to court to recover my electrical license.

16. As a Vietnam veteran, I filed a separate complaint with the U.S. Department of Labor's Office of Federal Contractor Compliance Programs ("OFCCP") on April 15, 2004. I sought "make whole relief" such as back pay and lost benefits under VEVRAA due to: (a) employment discrimination as a covered veteran; (b) Schindler's willful violations under VEVRAA in failing to adapt and institute an affirmative action program for veterans and disabled veterans as required by its federal contracts; (c) Schindler's failure to offer its employees an invitation to self identify as a veteran. A copy of my administrative complaint is attached as Exhibit A.

17. In May or June 2004, OFCCP provided Schindler a copy of the complaint and began an investigation of Schindler's compliance with VEVRAA. As a result of the investigation into my complaint, Schindler filed a small number of VETS-100 reports on or about

September 30, 2004. (These are the reports attached to the complaint.)

18. In a decision dated February 7, 2005, OFCCP denied my complaint, finding that there was insufficient evidence to conclude that my demotion and termination from Schindler were motivated by my status as a Vietnam-era veteran. OFCCP correctly found that I am a covered Vietnam-era veteran under VEVRAA, and that Schindler is a non-exempt government contractor subject to the Act. A copy of the decision is attached as Exhibit B.

19. However, without any support in the record, OFCCP found that Schindler had filed timely VETS-100 reports for its New York and New Jersey offices, and that it had adopted an affirmative action program. The OFCCP decision did not make any findings about the truth or falsity of the VETS-100 reports, because I did not raise that issue in my complaint.

20. I filed my appeal on March 20, 2005. It has been pending for 2½ years. A copy of the appeal, without exhibits, is attached as Exhibit C. OFCCP sent me two letters in mid-2005 acknowledging my appeal and explaining the review process. These letters are attached as Exhibits D and E. I spoke to the OFCCP lawyer who was responsible for the appeal in the summer of 2007. She asked me to provide updated information concerning the appeal, which I did in a letter dated July 30, 2007. A copy of that letter, without exhibits, is attached as Exhibit F.

Appendix E

21. Among other things, I submitted the following documents to OFCCP in support of my appeal:

a. An affidavit from Walter Cooper, a Vietnam veteran and former Schindler employee. Mr. Cooper told OFCCP Compliance Officer Cheryl King in 2004 that Schindler did not have an affirmative action program, did not offer employees an invitation to self-identify as veterans and that he himself was forced out of the company in June 2003.

b. A statement by Schindler's Corporate Equal Employment Opportunity Manager, Annette Selvaggio, that Schindler did not have a process in place for employees to self-identify their veteran status. As the senior officer responsible for monitoring Schindler's compliance with VEVRAA and preparing the annual VETS-100 reports, Ms. Selvaggio's testimony is conclusive on this point.

c. A copy of the "affirmative action plan" provided by Schindler to the compliance officer. The plan is neither signed nor dated, and it identifies a non-existent entity, "The Schindler Elevator Company," as the employer. There are many other indications that the plan was never adopted or disseminated by Schindler. It does not comply with applicable regulations and provides no real employment protection.

22. The OFCCP decision in 2005 did not find that Schindler has ever asked its veteran employees to self-identify as required by VEVRAA. It did not find that any of the VETS-100 reports filed by Schindler were accurate or complete, nor did it specify which VETS-100 reports were actually filed with the Department of Labor. The decision was issued on February 13, 2005, only one week before DOL stated (in the FOIA response described below) that it was unable to locate any VETS-100 reports other than three reports filed in September 2004. The FOIA response suggests that OFCCP could not have concluded that Schindler properly filed its VETS-100 reports before 2004.

23. The OFCCP decision is also limited to OFCCP's Northeast Region, covering Schindler's offices in New York and New Jersey. The decision covers only the period of my termination in 2003 and OFCCP's investigation in 2004.

24. Because the scope of the OFCCP complaint is much narrower than the False Claims Act complaint, the administrative decision will not resolve most of the factual issues relating to Schindler's compliance with VEVRAA.

The Freedom of Information Act Requests

25. While the Department of Labor investigation was proceeding, in November 2004 my wife submitted a request to the Department of Labor under the Freedom of Information Act ("FOIA") for copies of any VETS-100 reports filed by Schindler in 2002, 2003 or 2004.

26. I had voluntarily disclosed Schindler's failure to comply with the requirements of VEVRAA to the U.S. Department of Labor approximately nine months before this first FOIA request.

27. DOL responded to the FOIA request on February 20, 2005. Three redacted copies of VETS-100 reports submitted by Schindler dated September 30, 2004 were provided. The DOL further stated that no VETS-100 reports were found for the requested years 2002 or 2003. A copy of the FOIA request and DOL's response is attached as Exhibit G. The information about the reports that DOL could not find was contained in a letter addressed to my wife and sent directly by DOL to our home in New Jersey.

28. I knew that the 2004 reports were merely a corrupt attempt by Schindler to appear compliant with VEVRAA. Based on my direct and independent knowledge of the large number of Schindler locations around the country and of the management policies of the company, I knew that Schindler did not file many of the VETS-100 reports required by VEVRAA. Further, the 2004 VETS-100 reports were false and incomplete. Further, as a Vietnam veteran and a longtime employee of Schindler, I was never offered an invitation to self-identify as a covered veteran under VEVRAA and I knew this information would be necessary to complete legitimate VETS-100 reports. Finally, I knew personally many veterans who were employed by Schindler and should have been counted in the VETS-100 reports.

Appendix E

29. In January 2005, Mrs. Kirk submitted a second Freedom of Information Act request to the Department of Labor for copies of any VETS-100 reports filed by Schindler for the years 1998 through 2001. In September 2005, the Office of the Assistant Secretary for Veterans Employment and Training responded, in a letter addressed to Mrs. Kirk and mailed to our home, that the Labor Department had located no VETS-100 reports for the years 1998, 1999 or 2000. A copy of the FOIA request and DOL's response is attached as Exhibit H.

30. In the same letter, the Department of Labor provided a collection of VETS-100 reports ("the 2002 Reports") for Schindler covering the 12-month period ending September 30, 2002. Based on the Department of Labor's discovery of these reports between January and September 2005, it appears that Schindler submitted the 2002 Reports more than two years after they were required to be filed. As explained in the complaint, the 2002 Reports are false and incomplete.

31. In April 2007, Mrs. Kirk submitted a third FOIA request to the Department of Labor for copies of any VETS-100 reports filed by Schindler for the years 2005 and 2006. In May 2007, the Office of the Assistant Secretary for Veterans Employment and Training provided copies of certain VETS-100 reports submitted by Schindler for the years ending September 30, 2005 and September 30, 2006. A copy of the FOIA request and DOL's response is attached as Exhibit I.

32. As explained in the complaint, Schindler's VETS-100 reports for 2005 and 2006 are false and incomplete.

The False Claims Act Complaint

33. In March 2005, I commenced this action to recover damages and civil penalties on behalf of the United States of America arising from false and/or fraudulent records and claims presented by Schindler Elevator Corporation in violation of the Federal Civil False Claims Act.

34. As I stated in the Amended Complaint, I have direct and independent knowledge of the fraud alleged in this action. Am. Cplt. ¶ 11. Although the Amended Complaint refers to the FOIA material (described above) and the government website listing specific Schindler contracts, the allegations of fraudulent conduct and violations of the False Claims Act are not based upon either the FOIA material or the website. While employed by Schindler, I personally read contracts, including government contracts, for modernization projects in the New York and Long Island region.

35. The following allegations in the complaint are based on my personal knowledge as an employee of Schindler. I have not included here all of the allegations that are based on my personal knowledge, but only enough to show that my core allegations are not based on the FOIA material. (The numbers refer to paragraphs of the Amended Complaint.)

2. Since at least March 1999, Schindler has submitted hundreds of claims to agencies of the United States government seeking payment for construction services relating to the manufacture, installation and maintenance of elevators and escalators in public buildings.

4. During the period from March 1999 to the present, Schindler failed to meet [VEVRAA's] requirements. It had no affirmative action program for veterans and did not ask its employees to identify themselves as veterans.

6. Daniel Kirk – who is himself a Vietnam-era veteran employed by Schindler in New York City until 2003 – knows that . . . Schindler did not take any steps to identify those employees who are veterans entitled to protection under the VEVRAA. Without that information, Schindler could not file accurate VETS-100 reports.

8. Schindler submitted bids for contracts and claims for payment knowing that it was not eligible either to enter into contracts or to collect payments because it had not complied with the VETS-100 reporting requirement. Schindler also allowed itself to be listed as an eligible contractor by the Department of Labor, knowing that it had failed to file VETS-100 forms or otherwise to comply with the requirements of VEVRAA.

9. [T]he United States has paid Schindler millions of dollars to which it was not entitled, because Schindler falsely certified that it was in compliance with VEVRAA.

13. At all times material to this complaint, Schindler has provided construction and maintenance services under contract to various agencies of the United States, including without limitation the Department of Defense (including separate contracts for the Pentagon, the Army and the Navy), the Department of Veterans Affairs, the Smithsonian Institution, the Internal Revenue Service, the Nuclear Regulatory Commission, the General Services Administration and the United States Postal Service.

26. [W]hile he was employed by Schindler, Mr. Kirk was never asked to identify himself as a veteran to any employee or officer of Schindler.

27. From 1998 to the present, Schindler never asked current employees of Schindler or Millar to self-identify. As a result, Schindler did not have the information necessary to file accurate VETS-100 forms, as required by VEVRAA.

28. VEVRAA also requires employers to adopt affirmative action programs for their covered

veteran employees. Mr. Kirk was employed by Schindler as a manager supervising over 100 employees, with responsibility for hiring, firing and promotion of those employees. He was never informed of any affirmative action program for veterans at Schindler. He was never provided any instruction in handling personnel decisions with respect to hiring, firing or promoting veterans. More recently, Mr. Kirk has obtained a copy of Schindler's employee manual, which makes no reference to any affirmative action program for veterans.

30. In short, Schindler has no affirmative action plan for veterans and did not have one during Mr. Kirk's employment at Schindler from 1989 to 2003. On information and belief, Schindler did not adopt or implement an affirmative action program at any time.

56. At all times since at least 1998, Schindler has been subject to the requirements of VEVRAA and its implementing regulations. Among other things, Schindler was required (a) to adopt and implement an affirmative action program for Vietnam-era veterans, (b) to offer its employees an opportunity to identify themselves as Vietnam-era veterans, and (c) to submit annual VETS-100 reports to the U.S. Department of Labor.

Appendix E

57. In violation of VEVRAA, Schindler failed to adopt and implement an affirmative action program. Its "Policies and Procedures" manual dated June 2002 contains no mention of any policy with respect to the hiring or promotion of veterans. During his employment at Schindler, Mr. Kirk was never informed of any such policy. Even though he was responsible for employment decisions in his department, Mr. Kirk received no direction concerning the hiring or promotion of veterans.

58. In violation of VEVRAA, Schindler failed to offer its employees an opportunity to identify themselves as Vietnam-era veterans. Mr. Kirk and other veterans employed by Schindler did not receive the self-identification forms used to gather information required by VEVRAA, and were never asked to provide that information.

59. When Schindler acquired Millar in 1989, and when former Millar employees were hired by Schindler in 2002, Schindler did not make the required effort to determine who was entitled to protection under VEVRAA. Specifically, Schindler did not ask the approximately 400 former Millar employees to self-identify in 2002 or thereafter.

69. At all times material to this complaint, Schindler did not ask Mr. Kirk or any other

current employee to self-identify for purposes of VEVRAA. As a result, any VETS-100 report filed by Schindler is false because the company failed to collect the information needed to submit an accurate report.

73. On information and belief, Schindler submitted claims for payment on all of its contracts with the government during the period covered by this complaint, March 1999 to the present.

74. At all times during this period, Schindler was in violation of VEVRAA and was not eligible for payment for material or services provided to the government pursuant to any contract exceeding the minimum amount specified in the Act.

75. Even while it was in violation of VEVRAA, Schindler expressly certified to the United States that it was in compliance with the Act. Schindler certified its compliance in each contract with the United States subject to VEVRAA . . . and in offers for such contracts.

79. In addition to claims for payment, Schindler also submitted offers to the government that falsely certified Schindler's compliance with VEVRAA. Schindler made these false statements to induce the government to enter into contracts for which

Schindler was ineligible because it had not, in fact, complied with VEVRAA.

81. During the period covered by this complaint, Schindler has entered into hundreds of contracts with the United States that exceed the minimum amounts provided by VEVRAA.

87. In addition [to the contracts listed in Exhibits B to F], Schindler and/or Millar entered into contracts exceeding the minimum amount provided by VEVRAA with the United States Postal Service between March 1999 and the present. These contracts include, without limitation, contracts for the renovation of the Post Offices located at 90 Church Street and 341 Ninth Avenue, both in Manhattan. Each claim for payment under these contracts was a false claim.

96. The United States, unaware of the falsity of the records, statements and claims made or caused to be made by Schindler, paid and continues to pay the claims that would not be paid but for defendant's illegal practices.

97. Under 31 U.S.C. § 1354 and applicable regulations, the contracting agencies were prohibited from paying these claims, and would not have done so . . . if Schindler had not filed false VETS-100 forms in late 2004

and thereafter to cover up its continuing ineligibility for such payments.

36. Taken together, these allegations are sufficient to state a claim that Schindler violated the Federal False Claims Act.

37. To a person unfamiliar with Schindler, the VETS-100 Reports contained in the FOIA material are not obviously false and incomplete. Only a person with inside knowledge of Schindler's operations and employees could make the following allegations. (The numbers refer to paragraphs of the Amended Complaint.)

> 5. When *qui tam* plaintiff Daniel Kirk complained to the U.S. Department of Labor about this non-compliance, Schindler belatedly filed incomplete VETS-100 reports for the year ending September 30, 2004. However, Schindler filed these VETS-100 reports with the Department of Labor *knowing that they are false*. The reports submitted by Schindler purport to cover its entire workforce in New York and New Jersey, yet they assert that not one of the craftsmen, technicians or salesmen employed by Schindler in those states is a Vietnam-era veteran. More recently, Schindler filed false VETS-100 reports for the years ending in September of 2002, 2005 and 2006.
>
> 63. The 2004 Reports do not satisfy the requirements of VEVRAA and its

implementing regulations. Among other things:

> (a) Schindler failed to file a separate report for each hiring location employing 50 or more persons. The office where Mr. Kirk was a manager, 620 12th Avenue in New York City, employed more than 50 persons, but Schindler did not file a separate report for that office.
>
> (b) Schindler failed to identify the name and address of all hiring locations covered by the second and third of the 2004 Reports. One of these reports covers four locations and the other covers 14 locations, but none of these locations is identified.
>
> (c) The 2004 Reports cover only 18 unspecified locations in New York and New Jersey and the company headquarters in New Jersey. Schindler operates far more than 18 locations in the United States. Therefore, Schindler did not file VETS-100 reports for hiring locations outside of New York and New Jersey.

64. The 2004 Reports are false because they grossly understate the number of Vietnam-

Appendix E

Era Veterans and other veterans covered by VEVRAA who are employed by Schindler. In particular, the second report — the one that covers 14 locations in New York — falsely reports that Schindler has (a) no covered veterans who are technicians, (b) no covered veterans who are sales workers, (c) no covered veterans who are craft workers, (d) no covered veterans who are semi-skilled operatives, and (e) no covered veterans who are unskilled workers.

65. Relator Daniel Kirk personally knows many covered veterans employed by Schindler in New York City who should have been reported as technicians, craft workers or one of the other categories in the 2004 Reports. These veterans include, without limitation, John McNutt, Russ Macaluso, Robert "Monty" Montato, Joseph Silva, Amando Medera and John Gutowski.

66. On information and belief, the third of the 2004 Reports is also false because it reports (a) no covered veterans who are technicians, (b) no covered veterans who are sales workers, (c) no covered veterans who are craft workers, (d) no covered veterans who are semi-skilled operatives, and (e) no covered veterans who are unskilled workers.

67. Schindler operates manufacturing facilities in the United States, including plants

in North Carolina, Pennsylvania and Ohio. These facilities employ many Vietnam-era veterans who should have been counted in this VETS-100 report, including craft workers, technicians and semi-skilled operatives.

68. The third of the 2004 Reports purports to count the number of veterans employed in four locations where Schindler manufactures elevators and escalators. The report also purports to cover four locations in New Jersey. These statements are inconsistent, because Schindler does not have manufacturing facilities in New Jersey. Therefore, the third report is false.

70. Because it lacked the data necessary to file accurate reports, Schindler should have responded to Mr. Kirk's OFCCP complaint by acknowledging its non-compliance with VEVRAA. Instead, Schindler attempted to cover-up its violations by filing the false reports attached as Exhibit A.

71. [The 2002] reports are false. They fail to identify any hiring locations, as required by law, and they do not include required information concerning new hires (line 10) and the number of permanent employees at each site. Most important, the form covering nine New York locations lists *zero* Vietnam veterans among the technicians, sales

> workers, craft workers and operatives. Mr. Kirk was employed by Schindler in 2002, and he knows many Vietnam veterans who should have been counted in these categories.
>
> 72. [The 2005 and 2006 reports] are false. Among other things, the forms for 2005 and 2006 covering all New York locations list *zero* Vietnam veterans among the technicians, sales workers, craft workers and operatives.

38. I note that Schindler argues that it cannot be liable merely for filing false VETS-100 reports. Schindler appears to believe that false reports are acceptable. I disagree. It seems obvious that any report by a contractor to the government has to be true and accurate.

39. Schindler's argument also contradicts the complaint, where I alleged that "Schindler was not eligible for payment under any contract subject to VEVRAA because . . . the contracting agencies of the United States were prohibited by law and regulation from making payments to non-exempt *contractors who failed to comply with VEVRAA*." Am. Cplt. ¶ 44 (emphasis added). I also alleged that contracting agencies would not have paid Schindler's claims "if Schindler had not falsely certified that it had filed VETS-100 forms, *or if Schindler had not filed false VETS-100 forms in late 2004 and thereafter* to cover up its continuing ineligibility for such payments." Am. Cplt. ¶ 97(emphasis added). As the complaint states: "Even

while it was in violation of VEVRAA, Schindler expressly certified to the United States that it was in compliance with the Act." *Id.* ¶ 75.

40. I refer to these paragraphs to show that the complaint does not allege that payments are barred *only* to contractors who fail to file any VETS-100 reports, but also to contractors who file false reports. It was not only the missing VETS-100 reports that caused Schindler's certifications to be false. It was also the false reports and other violations of VEVRAA.

41. If the Court decides that the Amended Complaint does not satisfy section 3730(e)(4) of the False Claims Act or Rule 9(b) of the Federal Rules of Civil Procedure, I respectfully request leave to file a Second Amended Complaint. In that complaint, I would clarify that my knowledge of Schindler's fraud is not based on the government's FOIA responses, and that I have direct and independent knowledge of the fraudulent scheme.

42. In a Second Amended Complaint, I would also add the names of Schindler employees who participated in the violations of VEVRAA and subsequent false statements to government contracting officers. These people include:

- Annette Selvaggio. As noted above, as Schindler's Corporate EEO Manager, Ms. Selvaggio was responsible for preparing the annual VETS-100 forms and

submitting them to the government. She knew that the information on those forms was false and incomplete.

- Robert "Kim" Bremmer and Charles Gutowksi. Both were responsible for government contracts in the New York region of Schindler. Although they knew that the company was not in compliance with VEVRAA, they falsely certified that the company was in compliance and had filed its required VETS-100 forms.

- Francis C. Zell. Mr. Zell is the district manager for Schindler's office in Beltsville, Maryland. In the course of my investigation, I learned that Mr. Zell signed many contracts with the Smithsonian Institution and other federal agencies incorporating the Federal Acquisition regulations implementing VEVRAA.

43. In conclusion, I respectfully request that the Court deny Schindler's motion to dismiss the complaint and allow me an opportunity to prove my allegations. Having worked for Millar and Schindler for so many years, I am a genuine 'insider.' I brought defendant's

misconduct to the attention of the Department of Labor before anyone in or out of the government was investigating the company. I used the Freedom of Information Act to assist DOL's investigation of my administrative claim and to provide additional evidence for my qui tam complaint. I thought this is what a good whistleblower was supposed to do.

44. I believe that Schindler is taking jobs and benefits from Vietnam veterans and other employees who are supposed to be protected by VEVRAA. At the same time, the company is telling the government that it is in compliance with VEVRAA and eligible for contracts worth millions of dollars. This fraud must be stopped.

Dated: September 27, 2007

/s/ _____
Daniel E. Kirk, Jr.

Sworn to before me this 27 day of September, 2007.

/s/ _____
Karla MacKesson
Notary Public

Appendix E

Exhibit A to Kirk Affidavit-
Complaint of Discrimination in Employment Under Federal Government Contracts SA-66

Exhibit B to Kirk Affirmation-
Letter from Michele Hodge to Daniel Kirk, dated February 7, 2005 ..... SA-71

Exhibit C to Kirk Affirmation-
Letter from Daniel Kirk to Harold Mo Busch, dated March 7,2005 ..... SA-83

Exhibit D to Kirk Affirmation-
Letter from Patsy Baker Blackshear, Ph.D, dated June 2, 2005 ..... SA-89

Exhibit E to Kirk Affirmation-
Letter from Patsy Baker Blackshear, Ph.D, to Daniel Kirk, dated June 30, 2005 ..... SA-91

Exhibit F to Kirk Affirmation-
Letter from Daniel Kirk to Jacqueline C Joseph-Veal, Esq., dated July 30, 2007 ... SA-93

Exhibit G to Kirk Affirmation-
Letter from Linda Kirk to the Bureau of Labor Statistics, dated November 5, 2004 ..... SA-98

Appendix E

Exhibit H to Kirk Affirmation-
Letter from Linda Kirk to Rob Wilson,
dated January 17, 2005 ..... SA-104

Exhibit I to Kirk Affirmation-
Facsimile regarding: Freedom of
Information Act Request SA-135

APPENDIX F — DECLARATION OF JONATHAN A. WILLENS, FOR PLAINTIFF, IN OPPOSITION TO MOTION TO DISMISS THE COMPLAINT, DATED SEPTEMBER 28, 2007

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

05 Civ. 2917 (SHS)(KNF)

UNITED STATES OF AMERICA
EX REL. DANIEL KIRK,

PLAINTIFFS,

- AGAINST -

SCHINDLER ELEVATOR CORPORATION,

DEFENDANT.

DECLARATION OF JONATHAN A. WILLENS IN OPPOSITION TO MOTION TO DISMISS THE COMPLAINT

JONATHAN A. WILLENS declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney duly admitted to practice law in the State of New York. I represent Daniel Kirk, the plaintiff-relator in this qui tam action under the False Claims Act. I submit this declaration in opposition to the motion by Schindler Elevator Corporation to dismiss the complaint.

2. Mr. Kirk commenced this action on March 16, 2005, by filing the original complaint under seal pursuant to section 3730(b)(2) of the False Claims Act, 31 § 3730(b)(2).

3. The United States investigated the allegations from the time of filing until June 2007. During that time, the government did not exercise its right to refer Mr. Kirk's complaint to the Department of Labor or any other agency pursuant to section 3730(c)(5) of the Act.

4. On May 11, 2007, the Court entered an order allowing Mr. Kirk to file an amended complaint. After the United States declined to intervene, the Court entered an order unsealing the complaint. A true copy of that order, dated June 11, 2007, is attached hereto as Exhibit A.

5. Mr. Kirk filed and served the Amended Complaint on or about June 22, 2007. A copy of the Amended Complaint is attached to the Declaration of Steven A. Reiss in support of Schindler's motion.

6. The Amended Complaint includes, as Exhibit A, several VETS-100 reports that Schindler submitted to the Department of Labor for the year ending September 30, 2004. The VETS-100 form is a two-sided form with certain instructions and other information on the reverse side. Because this information is useful in understanding the contents of Schindler's reports, I attach hereto as Exhibit B a copy of the front and back of the form. Among other things, the instructions state:

Appendix F

"Employees must be counted by veteran status for each of the nine occupational categories (lines 1-9) in columns L, M and N. . . . Blank spaces will be considered zeros." Schindler's 2004 reports are blank in nearly all of the non-managerial categories in these three columns, corresponding to special disabled veterans, Vietnam-era veterans and other protected veterans.

7. Attached as Exhibit C is the Statement of Interest of the United States filed in April 2007 by the United States Attorney for the Southern District of New York in *U.S. ex rel. Winslow v. PepsiCo, Inc.*, 05 Civ. 9274 (CB) (MDF). The government opposed defendant's motion to dismiss the False Claims Act complaint on the basis of "primary jurisdiction."

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: September 28, 2007
New York, New York

/s/
Jonathan A. Willens

APPENDIX G — EXHIBIT A TO WILLENS DECLARATION — UNSEALING ORDER DATED JUNE 11, 2007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

05 Civ. 2917 (SHS)

UNITED STATES OF AMERICA
ex rel. DANIEL KIRK,

Plaintiff,

- against -

SCHINDLER ELEVATOR CORPORATION,

Defendant.

ORDER

The United States having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows:

IT IS ORDERED that,

1. The complaint shall be unsealed and service upon defendant by the plaintiff-relator is authorized.

2. The Government's Notice of Election to Decline Intervention shall be served by the plaintiff-relator upon defendant only after service of the complaint.

3. The *ex parte* status reports submitted to the Court by the Government, pursuant to 31 U.S.C. § 3730(b)(3), shall remain under seal and not be made public or served upon the defendant.

4. The seal shall be lifted as to all other matters occurring in this action.

5. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda and materials, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts. The United States is entitled to intervene in this action, for good cause, at any time.

6. All orders of this Court shall be sent to the United States by plaintiff-relator.

7. Should the plaintiff-relator or the defendants propose that this action be dismissed, settled, or otherwise discontinued, the Court will solicit the written consent of the United States before ruling or granting its approval.

8. There will be a pretrial conference on July 26, 2007, at 10:30 a.m.

SO ORDERED

Dated: New York, New York
6/11, 2007

/s/
UNITED STATES DISTRICT JUDGE

Appendix G

Exhibit B to Willens Declaration-
Department of Labor VETS-100 Federal
Contractor Report Form SA-207

APPENDIX H — EXHIBIT C TO WILLENS DECLARATION — STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA DATED APRIL 13, 2007

05 Civ. 9274 (CB) (MDF)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES *ex rel.* SCOTT WINSLOW,

Plaintiff,

v.

PEPSICO, INC.; PEPSICO BEVERAGE NORTH AMERICA; PEPSICO INTERNATIONAL, INC.; PEPSI-COLA SALES & DISTRIBUTION, INC.; VANDEGRIFT FORWARDING, INC.,

Defendants.

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

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Appendix II

SERRIN TURNER (ST-0646)
Assistant United States Attorney
– Of Counsel –

[TABLES INTENTIONALLY OMITTED]

PRELIMINARY STATEMENT

The United States of America (the "Government") respectfully submits this Statement of Interest to address two issues raised by defendants in their motions to dismiss this case, brought under the *qui tam* provisions of the False Claims Act, 31 U.S.C. §§ 3729-3733 ("FCA"), by plaintiff-relator Scott Winslow (the "relator"), against PepsiCo, Inc. (plus two of its management divisions and one of its subsidiaries – collectively, "Pepsi") and its importing agent, Vandegrift Forwarding Company, Inc. ("Vandegrift"). Specifically, the Government addresses: (1) whether a false claim may be predicated on an importer's certification of the proper customs classification for its merchandise; and (2) whether the doctrine of primary jurisdiction permits dismissal of this case with prejudice.[1]

---

1. The Attorney General, or any officer of the Department of Justice may, by statutory right, attend to the interests of the Government in a suit pending in any court of the United States and may conduct and argue any case in which the Government is interested. 28 U.S.C. §§ 517, 518(b). The Government has an interest in this civil action even though it has declined to intervene and take over the conduct of the litigation under the False Claims Act. *See* 31 U.S.C. § 3730(b)-(g).

Appendix II

As discussed below, first, both defendants in this case contend that the relator has failed to allege a "false statement" under the FCA on the ground that a customs classification is not a statement of fact but an interpretation of law, and therefore cannot qualify as "false." However, the term "false" as used in the FCA is intended to be broadly construed, so as to encompass the wide range of statements that can be used to defraud the Government – including statements that may involve an interpretation of law. Indeed, certifications of a legal nature routinely serve as predicates for FCA litigation, and there is no reason why the certifications at issue here, regarding a customs classification, cannot do so.

Second, citing two prior occasions when its soda concentrates were tested by U.S. Customs and Border Protection ("CBP"),[2] Pepsi argues that those tests confirmed the classification assigned by Pepsi and that the primary jurisdiction doctrine allows the Court to dismiss the case on this basis. As an initial matter, the primary jurisdiction doctrine is heavily disfavored in the FCA context given that the FCA directly empowers federal district courts to adjudicate cases brought under the statute. But in any event, the doctrine cannot serve as a basis for dismissing a case with prejudice, as it merely permits a court to stay its hand while referring

2. On March 1, 2003, the U.S. Customs Service was renamed U.S. Customs and Border Protection and folded into the Department of Homeland Security ("DHS"). All authorities previously delegated by the Department of Treasury to the U.S. Customs Service were delegated to DHS, and subsequently redelegated to CBP. 68 Fed. Reg. 28,322 (May 23, 2003).

a threshold issue to an agency for determination. It does not allow dismissal with prejudice based on a determination that an agency purportedly has already made.

BACKGROUND

A. The Customs Classification Process

Goods imported into the United States are taxed according to the Harmonized Tariff Schedule of the United States, essentially a catalog of all types of goods appearing in international trade. *See* 19 U.S.C. § 1202; Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes (2007 ed., rev. 1), USTIC Publication No. 3840, ("HTS"), Preface, *available at* http://hotdocs.usitc.gov/docs/tata/hts/bychapter/0700_Preface.pdf; *see also* 1 Peter Buck Feller, U.S. CUSTOMS AND INTERNATIONAL TRADE GUIDE §§ 8.01-04 (2d ed. 2006). The HTS is based on a hierarchical system of product categories designated by 4-digit, 6-digit, 8-digit, and 10-digit code numbers – the more digits, the more specific the product category. Feller, *supra*, § 8.02[2][a]. An *ad valorem* tariff rate – a stated percentage of the value of the product – is typically assigned to each 8-digit heading category. *Id.*[3]

CBP is the agency responsible for interpreting the HTS and determining how specific goods entering the

3. The 10-digit headings contain a 2-digit suffix used only for statistical reporting purposes. *Id.*

country should be classified and taxed under it. *See* 19 U.S.C. § 1500(b). In carrying out this function, CBP relies on importers to supply accurate information about imported merchandise – including the applicable HTS classification. Thus, Pepsi's characterization in its brief notwithstanding, *see* Pepsi Mem. at 5, the importer does not merely "propose[]" a classification for its merchandise; rather, the importer must certify that the identified classification is accurate. For each customs entry, the importer is specifically required to declare under oath, *inter alia*, that the merchandise has been correctly priced or valued and that "all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct." 19 U.S.C. § 1485(a). Both statute and CBP regulations make explicit that the failure to use reasonable care in filing such documentation – including in selecting a classification for the imported merchandise – may expose the importer to liability for fraud. *See* 19 U.S.C. § 1484(a) (requiring importers to use "reasonable care" in filing entry papers for any imported merchandise, including documentation showing "the declared value, classification and rate of duty applicable to the merchandise, and such other documentation . . . as is necessary to enable the Customs Service to . . . properly assess duties on the merchandise"); 19 C.F.R. pt. 171, App. B(D)(6) ("[U]nreasonable classification will be considered a lack of reasonable care (*e.g.*, imported snow skis are classified as water skis). Failure to exercise reasonable care in connection with the importation of merchandise may result in imposition of a section 592 penalty for fraud, gross negligence or negligence.").

Appendix II

Given the many product categories contained in the HTS, it is not unusual for a particular item to fit more than one category; yet it must be classified under a single category in order to determine the appropriate tariff rate. Accordingly, the HTS sets forth detailed guidance on how various product categories are to be applied and which are to take precedence over others. Such guidance is found in the General Rules of Interpretation contained in the HTS, as well as Explanatory Notes and a variety of other interpretative rules found throughout its Sections and Chapters of product categories. *See* Feller, *supra*, § 8.03.

An importer may, in advance of importation, provide CBP with a sample or detailed description of the good to be imported and request a "ruling letter" setting forth the agency's official position as to the proper classification for the good. *See* 19 C.F.R. pt. 177. A ruling letter is binding on CBP only with respect to the particular import transaction at issue, although it may subsequently be cited by the importer as authority for applying the same classification for transactions involving the same good. 19 C.F.R. § 177.9; *see also United States v. Mead Corp.*, 533 U.S. 218, 222-23 (2001). Regardless of whether the importer obtains a ruling letter, however, the importer remains obligated to use "reasonable care" in specifying a classification for an imported good at the time the entry papers are filed and must certify under oath that the classification is "true and correct." 19 U.S.C. §§ 1484(a), 1485(a).

The customs classification process culminates in the "liquidation" of an entry, which simply refers to CBP's

final computation of the duties owing on the imported goods – entailing a determination of the applicable classification and corresponding duty rate. 19 U.S.C. § 1514; 19 C.F.R. § 159.1; Feller, *supra*, § 6.04[1]. In liquidating an entry, CBP may determine that the goods properly belong under a different classification than that set forth in the importer's entry papers – in which case CBP will bill the importer for any increase in duties owing. Feller, *supra*, § 6.04[1]. A liquidation of an entry is final and conclusive upon the Government and the importer unless the importer files a protest within ninety days after the liquidation. 19 U.S.C. § 1514(a).

While a liquidation generally marks the close of an importation transaction, it in no way restricts the Government's rights where the liquidation is based on false or fraudulent information submitted by the importer – in which case the Government is fully entitled under the customs laws to collect the duties properly owing as well as administrative penalties, through administrative proceedings or by bringing a civil action in the Court of International Trade ("CIT"). 19 U.S.C. § 1592(d) (providing that, "notwithstanding" liquidation of an entry, CBP shall require that lawful duties be restored in the event of fraud, in addition to any administrative penalties); *see also id.* §§ 1592(b)&(e); 19 C.F.R. pt. 171, App. B. Moreover, and of importance here, the FCA provides an entirely separate and additional avenue of relief – available to both the Government and private whistleblowers – by which civil damages and penalties may be recovered for customs fraud in federal district court. *See Maclennan v. JCB,*

Inc., Civ. No. WN-88-874, slip. op. at 4-17 (D. Md. 1992) (attached hereto as Exhibit A) (FCA remedies are distinct from and not preempted by fraud provisions of the customs laws).[4]

B. The Customs Product Categories Relevant to This Case

The relator in this case alleges that defendants violated the "reverse false claim" provision of the FCA, 31 U.S.C. § 3729(a)(7), by knowingly misclassifying Pepsi soda concentrates under a duty-free customs classification in importation documents, thereby fraudulently depriving the Government of customs duties actually owed on the concentrates. Amended Complaint ("A.C.") ¶¶ 1, 107, 199. Specifically, according to the relator, Pepsi classified its soda concentrates

4. Many government programs include anti-fraud provisions, but such provisions do not constitute exclusive remedies that supplant the FCA. Indeed, courts have recognized in a wide range of contexts that the existence of administrative or other remedies for fraudulent conduct does not preclude FCA liability for the same conduct. *See, e.g.*, *United States v. Sforza*, 326 F.3d 107, 112-113 (2d Cir. 2003) (administrative provisions of Federal Employees' Compensation Act do not preclude FCA suit); *United States v. General Dynamics Corp.*, 19 F.3d 770, 777 (2d Cir. 1994) (remedies under Anti-Kickback Act do not preclude FCA suit); *United States v. Foster Wheeler Corp.*, 447 F.2d 100, 101 (2d Cir. 1971) (remedies under Truth in Negotiation Act do not preclude FCA suit); *United States v. Incorporated Village of Island Park*, 888 F. Supp. 419, 442 (E.D.N.Y. 1995) (remedies under Fair Housing Act do not preempt FCA suit).

under HTS § 3302.10.1000, entitled "mixtures of odoriferous substances used in the manufacture of non-alcoholic beverages," even though it knew that the concentrates should have been classified instead under a subheading of HTS § 2106.90, entitled "food preparations not elsewhere specified or included" in the HTS, which includes a subheading for miscellaneous "preparations for the manufacture of beverages," HTS § 2106.90.99. A.C. ¶¶ 48-53. Imports of "mixtures of odoriferous substances" covered by HTS § 3302.10.1000 are not subject to any customs duties, whereas imports of beverage preparations under HTS § 2106.90.99 are subject to an *ad valorem* duty of 6.4%. *Compare* HTS § 3302.10.1000, *available at* http://hotdocs.usitc.gov/docs/tata/hts/bychapter/0700c33.pdf, *with* HTS § 2106.90, *available at* http://hotdocs.usitc.gov/docs/tata/hts/bychapter/0700c21.pdf.

The Explanatory Notes of the HTS provide guidance as to the precise scope and applicability of the two classifications at issue in this case. The Explanatory Note for HTS § 3302 – which contains the "mixtures of odoriferous substances" classification that Pepsi used for its concentrates – explains that such substances refer to "essential oils, resinoids, extracted oleoresins or synthetic aromatics." It further states:

> This heading . . . includes . . . **preparations based on odoriferous substances, of a kind used for the manufacture of beverages**. . . . They must have a basis of one or more odoriferous substances, as described in Note

> 2 to this Chapter, which are used primarily to impart a fragrance and secondarily to give a flavour to beverages. Such preparations generally contain a relatively small quantity of odoriferous substance which characterize a particular beverage; they may also contain juices, colouring matter, acidulants, sweeteners, etc., provided that they retain their character of odoriferous substances. . . .
>
> This heading **excludes** compound alcoholic and non-alcoholic preparations of a kind used for the manufacture of beverages, with a basis of substances other than odoriferous substances . . . .

Explanatory Notes to HTS § 3302 (2002) (emphasis in original) (attached hereto as Exhibit B).[5]

By comparison, the Explanatory Note for HTS § 2106 – which contains the "miscellaneous beverage preparation" classification that the relator claims Pepsi should have used for its concentrates – explains that the heading includes, *inter alia*:

> Non-alcoholic or alcoholic preparation (**not based** on odoriferous substances) of a kind used in the manufacture of various non-

5. The 2002 version of the Explanatory Notes is cited given that this was the version in effect during the events at issue in this case.

> alcoholic or alcoholic beverages. . . . The preparations contain (in whole or in part) the flavouring ingredients which characterize a particular beverage. As a result, the beverage in question can usually be obtained simply by diluting the preparation with water, wine or alcohol, with or without the addition, of sugar or carbon dioxide gas. . . . The heading **excludes** preparations of a kind used for the manufacture of beverages, based on one or more odoriferous substances (**heading** 33.02).

Explanatory Notes to HTS § 2106 (2002) (emphasis in original) (attached hereto as Exhibit C).

As these Explanatory Notes indicate, whether a particular type of soda concentrate is properly classified under HTS § 3302 or § 2106 depends upon whether it has a basis in one or more odoriferous substances (*i.e.*, essential oils, resinoids, extracted oleoresins, or synthetic aromatics) used to impart fragrance and flavoring. If it does, then it is properly classified under a subheading of § 3302, such as § 3302.10.1000, as Pepsi classified the soda concentrates at issue in this case. If the soda concentrate does not have a basis in one or more odoriferous substances, then it cannot be classified under § 3302 and instead belongs under HTS § 2106, provided that no other heading is applicable.

ARGUMENT

POINT I

A CUSTOMS CLASSIFICATION CAN SERVE AS THE PREDICATE FOR A REVERSE FALSE CLAIM

Pepsi argues that the relator's complaint fails to state a claim under the FCA because it "rests on the sole contention that Defendants proposed an incorrect customs classification for soda concentrate" – which Pepsi argues cannot constitute "the false factual statement" required under the FCA because it is "a legal interpretation based on a unique set of facts." Pepsi Mem. at 11. Vandegrift similarly argues that an FCA claim cannot rest on an incorrect customs classification because "[t]he classification . . . is not a 'fact' but is, instead, the importer of record's position as to the consequences of the facts." Vandegrift Mem. at 15.

However, the FCA itself makes no distinction between statements of "fact" versus "legal interpretation." Rather, the FCA's reverse false claim provision, 31 U.S.C. § 3729(a)(7), simply prohibits the use of "a false record or statement" in order to avoid an obligation owed to the Government. There is no reason to construe the term "false" to exclude any record or statement that may involve the interpretation of legal concepts or terminology. To the contrary, the Supreme Court has stressed that the FCA is "intended to reach all types of fraud, without qualification, that might result

in financial loss to the Government." *United States v. Neifert-White Co.*, 390 U.S. 228, 232 (1968). The statutory term "false" thus should be flexibly construed, so as to ensure that the FCA fully covers the wide variety of records and statements that can be used to defraud the Government. *See Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 788 (4th Cir. 1999) ("The phrase 'false or fraudulent claim' in the False Claims Act should be construed broadly."); *see also Mikes v. Straus*, 274 F.3d 687, 696 (2d Cir. 2001) ("'False' can mean 'not true,' 'deceitful,' or 'tending to mislead.'"); *accord Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370, 379 (5th Cir. 2004) ("'False can mean 'deceitful,' or 'tending to mislead,' and a 'false claim' is one 'grounded in fraud which might result in financial loss to the Government.'") (quoting *Peterson v. Weinberger*, 508 F.2d 45, 52 (5th Cir. 1975)).

Indeed, it is not at all unusual for FCA liability to turn on allegedly "false" statements involving some element of legal interpretation. *See generally* 1 John T. Boese, Civil False Claims And Qui Tam Actions § 2.03[C], at 2-111 (3d ed. 2006) ("Since it is quite rare that an invoice or statement is false on its face, determining truth or falsity usually involves interpreting the relevant regulations, contracts, laws, and any other evidence that bears on the contested claims."); *see also Mikes*, 274 F.3d at 697 ("'[A] false claim may take many forms, the most common being a claim for goods or services not provided, or *provided in violation of contract terms, specification, statute, or regulation.*'") (quoting S. Rep. No. 99-345, at 9 (1986), *reprinted in*

1986 U.S.C.C.A.N. 5266, 5274) (emphasis added by the Court). As the Second Circuit specifically held in *Mikes*, an FCA claim may be based directly on a "legal falsehood," as "where a party certifies compliance with a statute or regulation as a condition to governmental payment." 274 F3d at 697. Thus, for example, courts have recognized FCA claims based on false certifications of compliance with medical standards,[6] environmental laws,[7] and anti-discrimination provisions[8] – even though such certifications necessarily entail an application of law to fact.

Thus, defendants cannot obtain dismissal of the complaint simply by characterizing the customs classification Pepsi certified for its product in its entry papers as a mere "legal interpretation" or "position as to the consequences of the facts." Pepsi's certification directly implied certain facts about the nature of the substance it was importing. As the Explanatory Notes in the HTS make clear, any product classified under this

6. *See, e.g., id.* (finding that certification that medical tests were "necessary for the health of the patient" could form the basis for an FCA claim).

7. *See, e.g., United States ex rel. Fallon v. Accudyne Corp.*, 880 F. Supp. 636, 638 (W.D. Wis. 1995) (allowing FCA claim to proceed based on allegedly false certifications that defense contractor had complied with environmental laws).

8. *See, e.g., United States v. Incorporated Village of Island Park*, 888 F. Supp. 419, 434-36, 440-41 (E.D.N.Y. 1995) (finding FCA violation where HUD grantee had falsely certified that it had complied with Fair Housing Act and affirmative action plan).

subheading must be a mixture based upon one or more odoriferous substances, *i.e.*, essential oils, resinoids, extracted oleoresins, or synthetic aromatics. So, by certifying that its concentrates were properly classified under this subheading, Pepsi thereby certified that the concentrates were mixtures based upon odoriferous substances. If Pepsi was in fact importing soda concentrates that did not contain any odoriferous substances, or if such substances did not form the basis of the product, then Pepsi's certification would be "false."[9] Accordingly, there is no reason why such a certification cannot serve as the predicate for liability under the FCA. *See Harrison*, 176 F3d at 788 (rejecting argument that statements could not create FCA liability because they were only "estimates," reasoning that "an opinion or estimate carries with it an implied assertion, not only that the speaker knows no facts which would preclude such an opinion, but that he does know facts which justify it") (internal quotation marks omitted).

9. It would also "tend[] to mislead," *Mikes*, 274 F3d at 696, as Customs relies on such certifications in computing import duties. Contrary to Vandegrift's contention, *see* Vandegrift Mem. at 14, Customs could not have determined the appropriate duty rate for Pepsi's soda concentrate based simply on the description of the product in the entry papers as "soda concentrate." There is no single HTS classification for "soda concentrate"; as explained above, such beverage preparations vary and belong under different HTS classifications depending on their particular properties, *e.g.*, whether they have a basis in odoriferous substances. For this very reason, an importer is required to certify the precise HTS classification for an imported product, as generic descriptions such as "soda concentrate" generally do not supply sufficient information to allow Customs to determine the applicable duty rate.

Appendix II

Pepsi further argues that "[a] disputed interpretation of a government regulation or contract provision about which reasonable minds can disagree cannot constitute the requisite false statement because it is an objective statement of fact." Pepsi Mem. at 12. However, putting aside whether this proposition is categorically correct as a matter of law, one simply cannot determine from the face of the complaint whether "reasonable minds can disagree" about the validity of Pepsi's classification of its soda concentrates. Rather, this is an issue of fact that cannot be resolved on a Rule 12(b)(6) motion. Notably, the cases cited by Pepsi on this point, *see* Pepsi Mem. at 12, are not to the contrary.[10]

In sum, because a customs classification can be "false" within the meaning of the FCA, and because the complaint itself affords no basis to conclude that Pepsi's

10. Most are decisions on summary judgment rather than a motion to dismiss. *See United States ex rel. Lamers v. City of Green Bay*, 168 F.3d 1013, 1019 (7th Cir. 1999); *Hagood v. Sonoma County Water Agency*, 81 F.3d 1465, 1478-79 (9th Cir. 1996); *Wang v. FMC Corp.*, 975 F.2d 1412 (9th Cir. 1992); *see also Riley* 355 F.3d at 377 (finding "reasonable minds may differ" argument "premature[]" at motion to dismiss stage). The remaining two cases, which were decided at the dismissal stage, concerned unique situations: in one, the alleged false statement concerned an "inherently ambiguous" legal issue, *see United States ex rel. Morton v. A Plus Benefits, Inc.*, No. 04-4148, 139 Fed. Appx. 980, 984 (10th Cir. Jul. 19, 2005) (unpublished); in the other, the court found that the alleged false statement concerned a legal issue specifically disputed in litigation with the Government at the time the statement was made, *see United States ex rel. Finney v. Nextwave Telecom*, 337 B.R. 479, 488 (S.D.N.Y. 2006).

classification of its soda concentrates was reasonable or truthful,[11] defendants' argument that the relator has failed to allege the requisite "false statement" under 31 U.S.C. § 3729(a)(7) should be rejected.

POINT II

THE PRIMARY JURISDICTION DOCTRINE DOES NOT APPLY

Pepsi argues that dismissal with prejudice "is appropriate under application of the primary jurisdiction doctrine because the import tariff classification is entrusted to the jurisdiction and particularized expertise of Customs, and Customs has already twice analyzed PepsiCo's concentrate and its duty classification, once in 2003 and a second time in 2006, and has confirmed the classification assigned by PepsiCo." Pepsi Mem. at 1; *see also id.* at 19. However, the primary jurisdiction doctrine does not afford a basis for dismissing a complaint with prejudice.

---

11. Pepsi's reliance on a Customs laboratory report from 2003 as evidence of the reasonableness of its classification is improper at the Rule 12(b)(6) stage. The document is not attached to or incorporated in the complaint; nor does the complaint otherwise rely on it. *See Chambers v. Time Warner*, 282 F.3d 147, 152-53 (2d Cir. 2002) (stressing that "a plaintiff's *reliance* on the terms and effect of a document in drafting the complaint is a necessary prerequisite to the court's consideration of the document on a dismissal motion") (emphasis in original).

Appendix II

The doctrine of primary jurisdiction allows a court to stay its hand in favor of administrative action by an agency when that course is necessary to protect the integrity of the agency's regulatory process. *Port of Boston Marine Terminal Ass'n v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 68 (1970). The doctrine does not apply merely because the area is complicated or because the agency has relevant investigatory mechanisms or expertise. Rather, the agency must be "charged with primary responsibility for governmental supervision or control of the particular industry or activity." *Id.*; *see also Nat'l Commc'ns Ass'n, Inc. v. AT&T*, 46 F3d 220, 223 (2d Cir. 1995) ("[C]ourts apply primary jurisdiction to cases involving technical and intricate questions of fact and policy that Congress has assigned to a specific agency."). In such cases, a court may "route the threshold decision as to certain issues" to that agency so as to avoid intruding on its authority. *Port of Boston Marine Terminal Ass'n*, 400 U.S. at 68.

"The doctrine, however, should be used sparingly, particularly where Congress has decided that the courts should consider an issue." *United States v. Henderson*, 416 F3d 686, 691 (8th Cir. 2005). Given that Congress has specifically vested district courts with jurisdiction to decide false claims cases, the use of the primary jurisdiction doctrine is heavily disfavored in the context of the FCA. Courts in FCA cases "generally decline to invoke this doctrine to defer to a federal agency, even where the FCA claims require interpretation of a regulatory scheme governed by an administrative agency." *United States ex rel. Taylor III v. Gabelli*, 345

Appendix H

F. Supp. 2d 340, 353 & nn.60-61(S.D.N.Y. 2004) (noting the existence of only one FCA case where a federal appellate court has so deferred); *see also, e.g.*, *Luckey v. Baxter Healthcare Corp.*, No. 95 C 509, 1996 WL 242977 (N.D. Ill. May 9, 1996) (declining to apply doctrine to FCA claim that defendant had failed to test blood products properly, notwithstanding that case turned on technical medical testing procedures as to which Food and Drug Administration had special competence).

Indeed, it is *routine* for an FCA case to be premised on a violation of a statute or regulation administered by an agency under a comprehensive regulatory regime. The most prominent example is health care fraud in the Medicaid and Medicare programs: the regulatory regimes in which these programs operate are notoriously "Byzantine," *Schweiker v. Gray Panthers*, 453 U.S. 34, 43 (1981), yet violations of their terms provide the basis for a large part of FCA practice, *see Mikes*, 274 F.3d at 692 (noting that since February 2000 over half of the $3.5 billion recovered under FCA derived from health care fraud cases). *See, e.g.*, *U.S. v. Chen*, No. 2:04CV00859-PMPPAL, 2006 WL 1554546, at *7 (D. Nev. May 30, 2006) (holding, in Medicare fraud case: "[T]his case involves regulations that, while unquestionably technical and complex, are not discretionary. Their meaning is ultimately the subject of judicial interpretation, and . . . compliance with these regulations, as interpreted by this court, . . . determines whether [defendant's billing practices] resulted in the submission of a 'false claim' under the Act.") (internal

quotation marks omitted). As another example, courts have readily recognized FCA claims alleging defective pricing and knowing violations of the Truth In Negotiations Act ("TINA"), 10 U.S.C. § 2306a – a comprehensive administrative statute intended to ensure fair negotiations in government procurements, which is implemented, like the customs laws, by specially established administrative bodies and courts. *See, e.g.*, *United States v. Foster Wheeler Corp.*, 447 F.2d 100 (2d Cir. 1971). Were courts to invoke the primary jurisdiction doctrine in every FCA case where the regulatory regime at issue is complex and administered by an agency with special expertise, FCA litigation would become routinely protracted and cumbersome, and the FCA's specific grant of jurisdiction to the federal courts to adjudicate these cases would effectively be undermined.

But in any event, whatever limited use should be made of the primary jurisdiction doctrine in the FCA context, Pepsi fundamentally misconstrues the doctrine here in contending that it provides the Court with discretion to dismiss the relator's complaint with prejudice. Pepsi Mem. at 19. The FCA expressly provides for jurisdiction in federal district court over any action to recover civil damages and penalties for the knowing use of a false statement to avoid an obligation owed to the Government. *See* 31 U.S.C. § 3732(a). If a complaint is validly stated under the Act, the district court must entertain it; neither the primary jurisdiction doctrine nor any other authority gives the court the "discretion" to leave the matter to be resolved by another body. *See McCarthy v. Madigan*, 503 U.S.

140, 146 (1992) ("[F]ederal courts are vested with a 'virtually unflagging obligation' to exercise the jurisdiction given them.") (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817-818 (1976)).

Despite the "potentially misleading" nomenclature of the primary jurisdiction doctrine, *Ellis v. Tribune Television Co.*, 443 F.3d 71, 81 n.12 (2d Cir. 2006), the question under the doctrine is not whether the court should have "jurisdiction" over the case. Rather, again, the doctrine merely allows a court to stay its hand while an agency considers a threshold issue in the litigation. As the Supreme Court has explained, the doctrine is

> specifically applicable to claims properly cognizable in court that contain some issue within the special competence of an administrative agency. It requires the court to enable a "referral" to the agency, staying further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling. Referral of the issue to the administrative agency does not deprive the court of jurisdiction; it has discretion either to retain jurisdiction or, if the parties would not be unfairly disadvantaged, to dismiss the case *without* prejudice.

Reiter v. Cooper, 507 U.S. 258, 268 (1993) (citations omitted) (emphasis added).

Pepsi seeks no such temporary delay in the litigation in order to obtain a determination from CBP on the proper classification of its soda concentrates. Rather, Pepsi seeks to terminate the litigation on the basis of determinations that CBP has purportedly already made. Pepsi argues that because "Customs has investigated PepsiCo's classification not once, but twice" and "[i]n neither such instance did Customs alter PepsiCo's proposed classification," the Court should "defer" to these prior determinations and dismiss the case. *See* Pepsi Mem. at 19-20. The primary jurisdiction doctrine simply is not the appropriate vehicle for this argument. The circumstances surrounding CBP's prior tests of Pepsi's soda concentrates and the extent to which the test results disprove relator's allegations of fraud are issues of fact like any other, and there is no reason why they cannot or should not be addressed through standard judicial processes as in any other litigation. *See Access 4 All, Inc. v. Trump Intern. Hotel and Tower Condominium*, 458 F. Supp. 2d 160, 164-65 (S.D.N.Y. 2006) ("When the parties ask the Court to weigh evidence outside of the pleadings and thereby test the merits of the evidence, not the complaint, such action is 'more appropriately reserved for the summary judgment procedure, governed by Rule 56, where both parties "may conduct appropriate discovery and submit the additional supporting material contemplated by" that rule.'") (quoting *Global Network Comme'ns, Inc. v. City of New York*, 458 F3d 150, 155 (2d Cir. 2006) (quoting *Chambers v. Time Warner, Inc.*, 282 F3d 147, 154 (2d Cir. 2002))).

Appendix H

CONCLUSION

Pursuant to the authorities above, an importer's certification of the customs classification applicable to its merchandise may qualify as a "false statement" within the meaning of the FCA, and the primary jurisdiction doctrine does not afford a basis for dismissal of this case with prejudice.

Dated: New York, New York
April 13, 2007

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York,
Attorney for the United States
of America

By: /s/
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Assistant United States Attorney
86 Chambers Street, 3rd Floor
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APPENDIX I — LETTER FROM JONATHAN A. WILLENS DATED DECEMBER 4, 2009

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December 4, 2009

Catherine O'Hagan Wolfe
Clerk of the Court
U.S. Court of Appeals
40 Centre Street
New York, New York 10007

Re: U.S. ex rel. Kirk v. Schindler Elevator Corp., 09-1678-cv

Dear Ms. Wolfe:

I represent Daniel Kirk, the plaintiff-appellant in this appeal. This matter is scheduled for argument before Panel A on December 10, 2009, at 10:00 a.m.

Mr. Kirk received the attached letter from the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP"). This letter, dated November 24, 2009, is relevant to one issue on appeal

and may be of interest to the Court. Accordingly, I request that copies of this letter be submitted to the Panel before the argument.

Based on the doctrine of primary jurisdiction, Defendant-Appellee Schindler Elevator Corporation argued below that the district court should dismiss this action and refer the question of Schindler's compliance with the Vietnam Era Veterans Readjustment Assistance Act, 38 U.S.C. § 4212, to the Department of Labor. The district court did not reach this issue when it dismissed the complaint. In the attached letter, OFCCP declines to address Schindler's general compliance with the Act. *See* page 7. Instead, OFCCP affirms an earlier ruling that Mr. Kirk's demotion by Schindler was not motivated by his status as a Vietnam-era veteran. *See* pages 3-5.

There is currently no administrative proceeding in the Department of Labor relating to Mr. Kirk's allegations against Schindler under the False Claims Act. Accordingly, we believe that Schindler's motion to dismiss the complaint on the basis of primary jurisdiction doctrine is moot.

Respectfully Submitted,

/s/
Jonathan A. Willens

cc: All Counsel, with attachment

APPENDIX J — LETTER FROM PATSY BAKER BLACHSEAR, PH.D. STAMPED NOVEMBER 24, 2009

U.S. Department of Labor

Employment Standards Administration
Office of Federal Contract
Compliance Programs
Washington, D.C. 20210

NOV 24 2009

Mr. Daniel Kirk
1 Shawn Court
Middletown, New Jersey 07748

Dear Mr. Kirk:

This letter responds to your correspondence to the U.S. Department of Labor and direct correspondence to the Office of Federal Contract Compliance Programs (OFCCP) alleging that you were wrongfully demoted and terminated from the Schindler Elevator Corporation. Based on your request for reconsideration, the National Office conducted a review of your case.

Background Synopsis

On April 15, 2004, you filed an individual discrimination complaint with OFCCP on the basis of your status as a Vietnam Era veteran. Your complaint was filed against Schindler Elevator Corporation of North America (Schindler).

Appendix J

Your complaint alleged discrimination based on Schindler subjecting you to an unlawful demotion, termination, and associated collateral issues in violation of its obligations under the nondiscrimination and affirmative action provisions of 38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended.

Specifically, you alleged:

A. Demotion:

1. On or about June 16, 2003, you were demoted from Regional Modernization Manager New York/Long Island to Field Superintendent;

2. Schindler reported false cost overages for the Modernization Department in May 2003, which it used as the reason for your poor performance and subsequent demotion;

3. Schindler leaked damaging information resulting in the spreading of rumors that you were laid off, fired, or demoted, which ultimately influenced your earning potential during June and July 2003;

4. Schindler informed your supervisor on July 16, 2003, that your demotion and pay cut were "politics" and the rumors were coming from Human Resources;

5. Schindler claimed not to be aware of the change to your job title in its internet telephone directory, although the decision to demote you had been made a month earlier;

6. Schindler demoted you from Regional Modernization Manager New York/Long Island to Field Superintendent, although you never received poor performance ratings;

7. Schindler promoted a non-Vietnam Era veteran to the position of Regional Modernization Manager New York/Long Island;

8. Schindler did not offer you an acceptable position after making the decision to demote you;

9. Schindler demoted you once it received approval from the National Labor Relations Board (NLRB) to merge employees from different unions; and

10. Schindler failed to release your Master Electrician license, thus creating an obstacle in your obtaining other employment.

B. Termination: Schindler created an intolerable working environment, which left you no alternative except to resign.

C. Pay: Schindler did not provide severance or vacation pay when you left Schindler.

D. Veteran Issues: Schindler did not have an Affirmative Action Program for covered veterans nor did Schindler offer veterans the opportunity to self-identify their veteran status.

E. Retaliation: Schindler retaliated against you by breaching your right to confidentiality by presenting a motion in Federal Court to dismiss your State Court case because you had filed a complaint with OFCCP.

Summary of Findings

During its September 17, 2004, onsite investigation and subsequent interviews, the OFCCP's Mountainside, NJ District Office found that your allegations of employment discrimination by Schindler, on the basis of your status as a covered veteran of the Vietnam Era, could not be substantiated as follow:

A. Demotion:

1. The investigation determined that you were not demoted because of your status as a Vietnam Era veteran. The case file reflects that as Regional Modernization Manager, your responsibilities included: (1) monitoring the labor costs for each job site; (2) ensuring every job was completed on time and on budget; (3)

forecasting the completion dates of projects; (4) reporting progress on each job to your immediate supervisors; and (5) assisting the collections department in determining whether Schindler was receiving timely payments. Evidence in the case file indicates that you were demoted because the New York Modernization Department, under your management, did not perform in an acceptable manner based on Schindler's expectations. This was attributed to your inability to: (1) ensure that projects sere being performed in a timely manner; (2) accurately assess the progress of projects; (3) forecast problems; and (4) close-out and finalize work on projects. The decision to demote was made by the Regional Vice President for the New York Region and your immediate supervisor, the District Manager of New Installation and Modernization New York. The Notification of the Results of Investigation incorrectly identified that both higher-level managers were veterans. You pointed out the Regional Vice President was not a veteran. This error is noted; however, it does not alter the basis for Schindler's decision to demote you.

2. There was no evidence in the case file that the reasons provided by Schindler to demote you were based on falsified information, reports and/or assessments. The record reflects that the Modernization Department under your management did not perform well in 2002. The

record also reflects that during a regional modernization manager's meeting in May 2003 you projected to meet your budget plan; the results did not meet your projection. A June 2003 internal audit, that included your department, identified an array of problem areas to include project surveys, estimating, and project management that resulted in Schindler instituting both employee and procedural changes. The investigation did not find that Schindler used your veteran status as the reason for reassigning and demoting you.

3. The case file indicates that a premature release of your reassignment did occur. On or about June 17, 2003, you verified that your job title had been changed in Schindler's online telephone directory. The investigation determined that Schindler's Manager of Human Resources and Labor Relations (a veteran) prepared the annual June update of Schindler's organizational charts for its parent company that included the decision regarding your reassignment. The updated organization chart was subsequently used to update the telephone directory. These activities occurred before the District Manager had an opportunity to formally advise you of the reassignment. The record reflects that the reason for the District Manager's delay in informing you was because he was going on vacation at the time the events were occurring and had planned to inform you

of the reassignment when he returned from vacation. Thus, the investigation found that although your reassignment was disseminated prior to your official notification; that release was not intentional based on your status as a Vietnam Era veteran. The case file indicates that despite your confirmation with your Supervisor and the Manager of Human Resources and Labor Relations that you were not going to be terminated, you subsequently made the decision to seek other employment with a competitor at a lower starting salary.

4. The investigation could not confirm that you were told the demotion and pay cut were "politics" and that rumors were coming from the Human Resources Department.

5. As noted above, the investigation determined that a premature release of your reassignment did occur. Schindler acknowledged the unintentional release of this information before you had the opportunity to meet formally with your District Manager. The management employees involved in the reassignment expressed apologies to you about the premature release of that information. The investigation revealed that, although there was a delay in telling you about your demotion, this incident did not occur because of your status as a Vietnam Era veteran.

6. As noted above, you were demoted because the New York Modernization Department, under your management, did not perform in an acceptable manner based on Schindler's expectations.

7. The case file indicates that in mid July 2003, after the decision was made to reassign you, the Manager of Human Resources and Labor Relations began a recruitment process. On January 29, 2004, an internal candidate was offered the position of Regional Modernization Manager New York/Long Island. Subsequently, on July 2004, an external candidate applied and accepted the position. The investigation determined there is no evidence to suggest that the contractor promoted an employee because he was a non-veteran or that it took this action to discriminate against veterans.

8. The case file reflects that after you learned of the pending reassignment, you had a discussion with District Manager in which you declined the Field Superintendent's position. The case file further reflects that the Field Superintendent position was offered because it was less demanding and you had previously performed well in this type of position. The investigation determined there is no evidence to support that the failure to offer a job acceptable to you was because your status as a Vietnam Era veteran.

9. The investigation determined that because of the integration of the Millar and Schindler companies, there were union employees in different locals. Moreover, as part of the integration process, these employees had to be merged, thus the involvement of the National Labor Relations Board (NLRB). NLRB approved the joining of the employees into one union.

10. The case file evidences that when you left Schindler's employment, open applications and violations for projects were still attached to your license. The record indicates it was the New Your City Building Department that had declined to permit you to use your electrical license pending resolution of the violations. The record also reflects there was another former Schindler employee who had violations on his license when he terminated his employment; his license was not immediately released. This individual was not a veteran.

B. Termination:

The case file reflects that you were going to be reassigned from the Regional Modernization Manager New York/Long Island position. As noted above, you had not been informed of the pending personnel action prior to its premature publication in Schindler's telephone directory. On or about July 15, 2003, the case file further

reflects that both of your supervisors informed you that they wanted you to remain with the company. Further, at your request, you were given an unscheduled three-week vacation, commencing on July 16, 2003. Thereafter, you decided not to return to work. There was no evidence that identified that you were terminated because of your status as a Vietnam Era veteran.

C. Pay:

The case file reflects that you were not entitled to severance pay because you terminated your employment with Schindler. It also notes that you received vacation pay.

D. Veteran Issues:

The case file reflects that Schindler submitted an affirmative action program for covered veterans to the OFCCP District Office. Additionally, Schindler submitted the then current VETS-100 Report to OFCCP too. The investigation determined that this allegation was without merit.

E. Retaliation:

You allege Schindler retaliated against you by breaching your right to confidentiality, by presenting a motion in Federal Court to dismiss

your case because you had filed a complaint with OFCCP. The case file reflects that you initially filed an action before the New York State Court. On November 3, 2003, Schindler subsequently moved the case to the United States District Court for the Southern District.

Additionally in subsequent correspondence, you accuse Schindler of not having kept records through its failure to maintain an affirmative action program for veterans, including posting of the hours during which it would be available for employees to inspect. You further alleged that Schindler failed to invite veterans to voluntarily self-identify their status and that it failed to prepare and submit the VETS-100 Report. The investigation determined that Schindler had developed an affirmative action program for veterans; it was submitted during the investigation of your complaint in 2004.

You suggested in correspondence that Schindler's failure to file its VETS-100 for 2002 and 2003 is somehow related to your complaint of discrimination and/or that that failure demonstrates Schindler's intent to discriminate against veterans. You also allege that Schindler knowingly filed false VETS-100 Reports. OFCCP does not draw a conclusion that Schindler's failure to submit VETS-100 Reports had a relationship to Schindler's decision to remove you from the Regional Modernization Manager's position. Your accusation that Schindler filed false reports is not substantiated with any evidence other than your statement.

Appendix J

In other correspondence, you indicated:

> "The Federal Contract Compliance Manual requires a *compliance* review to be conducted in addition to a *complaint investigation* when there is evidence, as there is here, of systemic or class type discrimination. However, OFCCP failed to perform a compliance review even though [your] complaint clearly reported systemic, class type discrimination involving many veterans at Schindler."

The decision on the type of investigation to conduct is determined by the OFCCP District Office. The manual indicates that complaint investigations may be done with or without a compliance review except that full compliance reviews should be conducted whenever the complaint appears to involve systemic or class type discrimination *and* the contractor's establishment has not been reviewed in the two years prior to the filing of the complaint. The statements in your complaint, "I do not believe that they have affirmative action in place for Veterans. I have never seen their affirmative action plan nor do they have one posted," and "There was never an invitation to self-identify as a veteran with Schindler," appears to have been considered by the District Office in the investigation of your complaint.

Schindler's 2004 AAP submitted to OFCCP included a notice that it was available for inspection by applicants and employees during normal business hours. It also

included a policy statement regarding self-identification of veteran status:

> "Applicants, after having received an offer of employment, but before commencing employment, are invited voluntarily to self-identify for coverage under AAP. Those who decide not to self-identify at the time that the invitation is made may choose to do so later."

A failure by Schindler in any of these areas would not automatically require a systemic discrimination investigation. It is clear from the investigation that veterans were employed at Schindler at all levels. There was no evidence to suggest a need for an expanded systemic discrimination investigation. The District Office's investigation focused on the allegations related to your employment with Schindler.

Lastly, you have accused OFCCP investigators from the Mountainside District office of supporting attempts to conceal anti-veteran discrimination. There are no facts in the record to support your suspicion.

Complaint Investigation Conclusion

In summary, the investigation found there was insufficient evidence to suggest that the contractor violated its obligations under the non-discrimination and affirmative action provisions of 38 U.S.C. 4212. A review of the case files concludes that there was no evidence to support your allegation that you were a victim of

discrimination because of your status as a Vietnam Era veteran. The National Office analysis of the investigation of your complaint also found the following:

> Receipt of the complaint was appropriately acknowledged and processed.
>
> You were interviewed to clarify information and statements noted in the complaint.
>
> You were asked to identify any witnesses you had regarding the allegations noted in your complaint.
>
> The contractor was notified of the complaint.
>
> The investigating district office conducted an onsite visit and:
>
> > reviewed and analyzed appropriate personnel records,
> >
> > reviewed and determined the contractor's application of its obligations under the non-discrimination and affirmative action provisions of 38 U.S.C. 4212,
> >
> > interviewed contractor management officials and contractor employees, and
> >
> > interviewed your witnesses.

Appendix J

As a result of the comprehensive review, we conclude that OFCCP carried out its responsibility to enforce VEVRAA. The Agency followed the implementing regulations and utilized appropriate procedures when investigating the complaint you filed. Thus, the National Office review supports the finding presented in the NORI that was issued to you and Schindler on February 7, 2005. This concludes and finalizes the National Office review of your request for reconsideration in the complaint filed against Schindler.

We apologize for the delay in completing your request for reconsideration.

Sincerely,

/s/
PATSY BAKER BLACHSEAR, PH.D.
Director
Division of Program Operations

cc: Michele Hodge
Acting Regional Director
Northeast Region

APPENDIX K — LETTER FROM STEVEN ALAN REISS DATED DECEMBER 4, 2009

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Steven Alan Reiss
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E-MAIL: steven.reiss@weil.com

December 4, 2009

Via U.S. Mail

Catherine O'Hagen Wolfe
Office of the Clerk of Court
U.S. Court of Appeals for the Second Circuit
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

Re: No. 09-1678, *United States of America ex rel. Daniel Kirk v. Schindler Elevator Corporation*, On Appeal from the United States District Court for the Southern District of New York (District Court No. 1:05-cv-02917-SHS)

Dear Ms. O'Hagan Wolfe:

I write on behalf of Defendant-Appellee Schindler Elevator Corporation pursuant to F.R.A.P. 28(j) to

address a November 24, 2009 decision by the U.S. Department of Labor ("DOL Decision"), which was submitted to the Court by Relator-Appellant Daniel Kirk by letter dated December 4, 2009. The DOL Decision rejects Kirk's appeal from the dismissal of his administrative complaint, which alleged substantially the same violations of VEVRAA as are at issue in this appeal.

The DOL Decision is a final determination, immune from judicial review. *See Greer v. Chao*, 492 F.3d 962, 964-65 (8th Cir. 2007) (O'Connor, J.); *Clementson v. Brock*, 806 F.2d 1402, 1405 (9th Cir. 1986) (Kennedy, J.). Moreover, because the "agency acted in a judicial capacity" and the parties "had an adequate opportunity to litigate," *Chauffeur's Training School, Inc. v. Spellings*, 478 F.3d 178, 1 (2d Cir. 2007), the collateral-estoppel doctrine precludes re-litigation of issues determined in the DOL Decision.

As relevant to this appeal, Kirk is thus precluded from alleging that Schindler did not have an affirmative action program ("AAP") or invite covered veterans to self-identify, as required by VEVRAA. The DOL Decision found that "Schindler's 2004 AAP... included a policy statement regarding self-identification of veteran status," expressly inviting employees "to self-identify." DOL Decision at 7.

This finding requires the dismissal of Kirk's claim that Schindler filed false VETS-100 reports. The sole reason Kirk has identified as to why Schindler would knowingly underreport veteran employees, as he alleges,

is that Schindler was supposedly trying to conceal its lack of a self-identification program. *See* Kirk Reply Br. 11, 15, 18. Since it is now established that Schindler *had* such a program, the allegations of false VETS-100 reports cannot meet the plausibility requirement imposed by *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950-51 (2009). Moreover, Kirk may no longer argue that the alleged false statements were material because they could have led to an investigation revealing that Schindler lacked an AAP or self-identification program. Kirk Reply Br. 17-18. Kirk therefore has no response to Schindler's demonstration that the alleged false statements were not material. Schindler Br. 23-27.

Sincerely,

/s/
Steven Alan Reiss

cc: All Counsel

SUPPLEMENTAL APPENDIX

8

Supreme Court, U.S.
FILED
NOV 29 2010
OFFICE OF THE CLERK

No. 10-188

IN THE
Supreme Court of the United States

SCHINDLER ELEVATOR CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA,
ex rel. DANIEL KIRK,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL APPENDIX

JONATHAN A. WILLENS
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PETITION FOR CERTIORARI FILED AUGUST 5, 2010
CERTIORARI GRANTED SEPTEMBER 28, 2010

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211

TABLE OF CONTENTS

PAGE

Exhibit A to Complaint-
Schindler's VETS-100 Federal Contractor Report, dated September 30, 2004 ..... SA-1

Exhibit B to Complaint-
Schindler Elevator Contracts 1999 through 2001 ..... SA-5

Exhibit C to Complaint-
Millar Elevator Contracts 1999 through 2001 ..... SA-24

Exhibit D to Complaint-
Schindler Elevator Contracts 2002 through 2006 ..... SA-29

Exhibit E to Complaint-
Millar Elevator Contacts 2002 through 2006 ..... SA-51

Exhibit F to Complaint-
Schindler Elevator Contracts 2007 ..... SA-53

Exhibit B to Declaration-
Notification of Results of Investigation, dated February 7, 2005 ..... SA-55

Exhibit A to Kirk Affidavit-
Complaint of Discrimination in Employment Under Federal Government Contracts SA-66

Exhibit B to Kirk Affidavit-
Letter from Michele Hodge to Daniel Kirk, dated February 7, 2005 ..... SA-71

Exhibit C to Kirk Affidavit-
Letter from Daniel Kirk to Harold Mo Busch, dated March 7,2005 ..... SA-83

Exhibit D to Kirk Affidavit-
Letter from Patsy Baker Blackshear, Ph.D, dated June 2, 2005 ..... SA-89

Exhibit E to Kirk Affidavit-
Letter from Patsy Baker Blackshear, Ph.D, to Daniel Kirk, dated June 30, 2005 ..... SA-91

Exhibit F to Kirk Affidavit-
Letter from Daniel Kirk to Jacqueline C Joseph-Veal, Esq., dated July 30, 2007 ..... SA-93

Exhibit G to Kirk Affidavit-
Letter from Linda Kirk to the Bureau of Labor Statistics, dated November 5, 2004 ..... SA-98

Exhibit H to Kirk Affidavit-
Letter from Linda Kirk to Rob Wilson, dated January 17, 2005 ..... SA-104

Exhibit I to Kirk Affidavit-
Facsimile regarding: Freedom of Information Act Request SA-135

Exhibit B to Willens Declaration-
Department of Labor VETS-100 Federal Contractor Report Form SA-207

Exhibit A to Complaint—
Schindler's VETS-100 Federal Contractor Report, dated September 30, 2004

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO 1293-0005
Expires: November 30, 2004

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS 100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

9113464

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☒ Multiple Establishment Headquarters ☐ Multiple Establishment Hiring Location ☐ Multiple Establishment-State Consolidated (specify number of locations) _____(MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above ADO Company Contact Information Below)

COMPANY No: 0729687	TWELVE MONTH PERIOD ENDING: 09/30/2004 (M M D D Y Y Y Y)
NAME OF PARENT COMPANY: SCHINDLER ELEVATOR CORPORATION (Headquarters)	ADDRESS (NUMBER AND STREET): 20 WHIPPANY ROAD
CITY: MORRISTOWN	COUNTY: MORRIS; STATE: NJ; ZIP CODE: 07960-6735
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973) 397-6411 Annette_Selvaggio@us.schindler.com

NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET):
CITY:	COUNTY: STATE: NJ ZIP CODE:

NAICS: 235710 DUNS: 09-480-9993 EMPLOYER ID (IRS TAX NO.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN I, M, AND R, LINES 1-8. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S, ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 8, AND COLUMNS I, M, H AND O, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (I)	NUMBER OF EMPLOYEES: OTHER PROTECTED VETERANS (M)	NUMBER OF EMPLOYEES: OTHER PROTECTED VETERANS (R)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	NEW HIRES (PREVIOUS 12 MONTHS): OTHER PROTECTED VETERANS (P)	NEW HIRES (PREVIOUS 12 MONTHS): (Q)	NEW HIRES (PREVIOUS 12 MONTHS): (R)	NEW HIRES (PREVIOUS 12 MONTHS): TOTAL NEW HIRES (S)
1		2	1					
2		5						
3								
4								
5		3						
6								
7								
8								
9								
10								61

Report the total number of permanent employees during the period covered by this report.

[redacted]

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO:1293-0005
Expires: November 30, 2004

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

94344

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
[X] Prime Contractor [X] Subcontractor	[ ] Single Establishment [X] Multiple Establishment - Headquarters [ ] Multiple Establishment Hiring Location [X] Multiple Establishment - State Consolidation (specify number of locations) 17 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above ADD Company Contact information below)

COMPANY No.: 0729687	TWELVE MONTH PERIOD ENDING: 09/30/04 (M M D D Y Y Y Y)
NAME OF PARENT COMPANY: SCHINDLER ELEVATOR CORPORATION	ADDRESS (NUMBER AND STREET): 20 WHIPPANY ROAD
CITY: MORRISTOWN	COUNTY: MORRIS; STATE: NJ; ZIP CODE: 07960-4535
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973) 397-6411 Annette.Selvaggio@us.schindler.com
NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET):
CITY:	COUNTY: ; STATE: ; ZIP CODE:

NAICS: 235710 DUNS: 07-480-9993 EMPLOYER ID (IRS TAX NO.) 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S, ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND O, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VETERANS OF THE VIETNAM ERA (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VETERANS OF THE VIETNAM ERA (P)	OTHER PROTECTED VETERANS (Q)	NOT A PROTECTED VETERAN (R)	TOTAL (S)
1		5						
2								
3								
4								
5								
6								
7								
8								
9								
10					1			93

Report the total number of permanent employees during the period covered by this report.

[redacted]

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: November 30, 2004

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 728
Lanham, Maryland 20703-0728

Kim [redacted] 943424

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 11 (MSC)

ATTN: Human Resources/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above ADD Company Contact Information Below)

COMPANY No.	TWELVE MONTH PERIOD ENDING (M M D D Y Y Y Y)
0729687	09/30/2004

NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)		
SCHINDLER ELEVATOR CORPORATION	20 WHIPPANY ROAD		
CITY	COUNTY	STATE	ZIP CODE
MORRISTOWN	MORRIS	NJ	07960-4735
NAME OF COMPANY CONTACT	TELEPHONE AND EMAIL FOR CONTACT		
Annette Selvaggio	Annette_Selvaggio@us.schindler.com		(973) 397-6411

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)		
Schindler Elevator Corporation			
CITY	COUNTY	STATE	ZIP CODE
		NJ	

NAICS: 333921 DUNS: 09-480-9993 EMPLOYER ID (IRS TAX No.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-8. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S, ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 8, AND COLUMNS L, M, N AND O, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	OTHER DISABLED VETERANS (M)	ARMED FORCES SERVICE MEDAL VETERANS (N)	SPECIAL DISABLED VETERANS (O)	OTHER DISABLED VETERANS (P)	ARMED FORCES SERVICE MEDAL VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES DURING REPORTING PERIOD (S)
1		1						
2								
3								
4								
5		1						
6								
7								
8								
9								
10								35

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Minimum Number [redacted] Maximum Number [redacted]

[redacted]

Exhibit B to Complaint—
Schindler Elevator Contracts 1999 through 2001

AWARD Search Results

34 Documents Found | 1 - 10 Of 34 | Next

AWARD ID:	3600-[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$103000.00
AWARD ID:	3600-[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$274000.00
AWARD ID:	3600-[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$228800.00
AWARD ID:	3600-[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$42000.00
AWARD ID:	3600-[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$478000.00
AWARD ID:	3600-[illegible]	Doc Type:	DO
Mod Number:	0PT3	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V86DP1220
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$11000.00
AWARD ID:	1210-[illegible]	Doc Type:	DCA
Mod Number:	4	Status:	Final
Agency Name:	USDA, OFFICE OF OPERATIONS	Referenced IDV ID:	-
Office Name:	DEPT OF AGRICULTURE/OPPM	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$428000.00
AWARD ID:	3300-[illegible]	Doc Type:	DCA
Mod Number:	32	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$33000.00
AWARD ID:	3300-[illegible]	Doc Type:	DCA
Mod Number:	34	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$64000.00
AWARD ID:	3300-[illegible]	Doc Type:	DCA
Mod Number:	33	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$223000.00

34 Documents Found | 1 - 10 Of 34 | Next

AWARD Search Results

34 Documents Found — Previous 11 - 20 Of 34 Next

AWARD ID:	3309-1999[illegible]CC10220	Doc Type:	DCA
Mod Number:	31	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$11000.00
AWARD ID:	3309-1999[illegible]CC10220	Doc Type:	DCA
Mod Number:	30	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$25000.00
AWARD ID:	3309-1999[illegible]CC10220	Doc Type:	DCA
Mod Number:	29	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$114000.00
AWARD ID:	3309-1999[illegible]CC10220	Doc Type:	DCA
Mod Number:	27	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$17900.00
AWARD ID:	3309-1999[illegible]CC10220	Doc Type:	DCA
Mod Number:	26	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$91000.00
AWARD ID:	3309-1999[illegible]CC10220	Doc Type:	DCA
Mod Number:	25	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$13900.00
AWARD ID:	4740-AZ09[illegible]C0004	Doc Type:	DCA
Mod Number:	P013	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 PHILATLANTIC	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$40900.00
AWARD ID:	4740-CD09[illegible]C0008	Doc Type:	DCA
Mod Number:	P004	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 ALLEGHENY	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$2938000.00
AWARD ID:	4740-CD09[illegible]C0008	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 ALLEGHENY	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$2038000.00
AWARD ID:	4740-CD09[illegible]C0008	Doc Type:	DCA
Mod Number:	P001	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 ALLEGHENY	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$18000.00

34 Documents Found — Previous 11 - 20 Of 34 Next

AWARD Search Results

34 Documents Found — Previous 21 - 30 Of 34 Next

AWARD ID:	4740-CD9901P9811DGSQ3P19CDC0025	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 ALLEGHENY	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$187000.00
AWARD ID:	9700-DAAA09990001003	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	ROCK ISLAND ARSENAL	NAICS Code:	
Vendor Name:	SCHINDLER ELECTRIC INCORPORATE	Base And All Options Value:	$0.00
		Action Obligation:	$38238.00
AWARD ID:	9700-DADA10P9C0016	Doc Type:	DCA
Mod Number:	P00003	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	WALTER REED ARMY MEDICAL CENTER	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$117773.00
AWARD ID:	8600-DA1P91P9812BCOPC10007	Doc Type:	PO
Mod Number:	43	Status:	Final
Agency Name:	HOUSING AND URBAN DEVELOPMENT, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF HOUSING AND URBAN DEVELOPMENT	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$15900.00
AWARD ID:	4740-GA0001P9111BGS05P90GAC0010	Doc Type:	PO
Mod Number:	PS12	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF TENANT OPERATIONS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$12000.00
AWARD ID:	4740-GS02P99PNC0044	Doc Type:	DCA
Mod Number:	PS12	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0064)	Base And All Options Value:	$681613.00
		Action Obligation:	$28920.00
AWARD ID:	3342-JFKC11P9920D011P99MJC0014	Doc Type:	PO
Mod Number:	03	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$60000.00
AWARD ID:	4740-KZ0001P9810CP0001KZ0001GS09P9RKSD0042	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P9RKSD0042
Office Name:	SAN FRANCISCO SERVICE CENTER	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$978900.00
AWARD ID:	4740-KZ0001P9810CP0001KZ0001GS09P9RKSD0042	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P9RKSD0042
Office Name:	SAN FRANCISCO SERVICE CENTER	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$978900.00
AWARD ID:	4740-LC0001P9402BGS04P91RYC0018	Doc Type:	PO
Mod Number:	P003	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	MIAMI PROPERTY MANAGEMENT CENTER	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$27000.00

34 Documents Found — Previous 21 - 30 Of 34 Next

AWARD Search Results

34 Documents Found — Previous 21 - 30 Of 34 Next

AWARD ID:	4740-CD0001998111DG582P88CDC0028	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 ALLEGHENY	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$107800.00
AWARD ID:	8700-DAAA0898N1066	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	ROCK ISLAND ARSENAL	NAICS Code:	
Vendor Name:	SCHINDLER ELECTRIC INCORPORATE	Base And All Options Value:	$0.00
		Action Obligation:	$39228.00
AWARD ID:	8700-DADA1899C0018	Doc Type:	DCA
Mod Number:	P00003	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	WALTER REED ARMY MEDICAL CENTER	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$117773.00
AWARD ID:	8400-DU1201998128CDPC18007	Doc Type:	PO
Mod Number:	43	Status:	Final
Agency Name:	HOUSING AND URBAN DEVELOPMENT, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF HOUSING AND URBAN DEVELOPMENT	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$18000.00
AWARD ID:	4740-GA0001998111RGD98P99OAC0010	Doc Type:	PO
Mod Number:	P312	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF TENANT OPERATIONS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$12000.00
AWARD ID:	4740-GS02P98EPMC0044	Doc Type:	DCA
Mod Number:	PB12	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0054)	Base And All Options Value:	$581613.00
		Action Obligation:	$28920.00
AWARD ID:	3182-JFKC1199980BO311P98BJC0014	Doc Type:	PO
Mod Number:	03	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$60000.00
AWARD ID:	4740-KZ0001998104CP0998KZ0001098P98KSD0043	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0043
Office Name:	SAN FRANCISCO SERVICE CENTER	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$978000.00
AWARD ID:	4740-KZ0001998104CP0998KZ0001098P98KSD0043	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0043
Office Name:	SAN FRANCISCO SERVICE CENTER	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$978000.00
AWARD ID:	4740-LC0001998401BG984P91RYC0010	Doc Type:	PO
Mod Number:	P009	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	MIAMI PROERTY MANAGEMENT CENTER	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$27000.00

34 Documents Found — Previous 21 - 30 Of 34 Next

AWARD Search Results

34 Documents Found

Previous 31 - 34 Of 34

AWARD ID:	9700 N6871198N5087	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	NAVAL FACILITIES ENGINEERING COM	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$108000.00
AWARD ID:	9700 N6892197C0026	Doc Type:	DCA
Mod Number:	P00008	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	DODDEPARTMENT OF THE NAVY	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$106332.00
AWARD ID:	3150 NRCHQ199905DNRC 199114B	Doc Type:	DCA
Mod Number:	13	Status:	Final
Agency Name:	NUCLEAR REGULATORY COMMISSION	Referenced IDV ID:	-
Office Name:	NUCLEAR REGULATORY COMMISSION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$148000.00
AWARD ID:	4740 HGJ001199809BGS04P99RUN0041	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	TAMPA PROPERTY MANAGEMENT CENTER	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$18000.00

34 Documents Found

Previous 31 - 34 Of 34

AWARD Search Results

49 Documents Found | 1 - 10 Of 49 | Next

AWARD ID:	9700-0003	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9470D0003
Office Name:	PENREN	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$893228.00
AWARD ID:	9700-0001	Doc Type:	DO
Mod Number:	1	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9479D0003
Office Name:	PENREN	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$160000.00
AWARD ID:	9700-0001	Doc Type:	DO
Mod Number:	1	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9479D0003
Office Name:	PENREN	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$160000.00
AWARD ID:	9700-0001	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9479D0003
Office Name:	PENREN	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$3391816.00
AWARD ID:	9700-0001	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9479D0003
Office Name:	PENREN	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$1738888.00
AWARD ID:	3600-0024319999[illegible]P1948	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$28000.00
AWARD ID:	3600-0004819999[illegible]C4822	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$872000.00
AWARD ID:	3600-0082319999[illegible]P8748	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V823P8748
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$288000.00
AWARD ID:	3600-0004819999[illegible]C379	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$25000.00
AWARD ID:	3600-0004819999[illegible]C391	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$578000.00

49 Documents Found | 1 - 10 Of 49 | Next

AWARD Search Results

49 Documents Found — Previous 11 - 20 Of 49 Next

AWARD ID:	3600-0044819999100648C01328V648C391	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V648C391
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$61000.00
AWARD ID:	3600-0044719991C0447C00010V447P1738	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V447P1738
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$53000.00
AWARD ID:	3600-0048D1999100V00D407P2837	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$47000.00
AWARD ID:	3600-0048D1999100C076C00002V00D478P1220	Doc Type:	DO
Mod Number:	SA4	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V00D478P1220
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$12000.00
AWARD ID:	1218-0314219991D0033142000003	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	USDA, OFFICE OF OPERATIONS	Referenced IDV ID:	-
Office Name:	DEPT OF AGRICULTURE/OPPM	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$421000.00
AWARD ID:	3300-1999019990270430CC10220	Doc Type:	DCA
Mod Number:	38	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$134000.00
AWARD ID:	3300-1999019999D9930CC10384	Doc Type:	DCA
Mod Number:	4	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$827000.00
AWARD ID:	3300-1999019999D9930CC10384	Doc Type:	DCA
Mod Number:	6	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$248000.00
AWARD ID:	3300-1999019999D9930CC10384	Doc Type:	DCA
Mod Number:	2	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$15000.00
AWARD ID:	3300-1999019999D9930CC10384	Doc Type:	DCA
Mod Number:	3	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$148000.00

49 Documents Found — Previous 11 - 20 Of 49 Next

AWARD Search Results

49 Documents Found — Previous 21 - 30 Of 49 Next

AWARD ID:	3300-1999[illegible]	Doc Type:	DCA
Mod Number:	1	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$24000.00

AWARD ID:	3300-1999[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$219000.00

AWARD ID:	1443-[illegible]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	NATIONAL PARK SERVICE	Referenced IDV ID:	-
Office Name:	MIDWEST REGION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$80000.00

AWARD ID:	3300-[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$219000.00
		Action Obligation:	$219000.00

AWARD ID:	1999-[illegible]	Doc Type:	DCA
Mod Number:	4	Status:	Final
Agency Name:	STATE, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	AMERICAN EMBASSY- BRUSSELS	NAICS Code:	
Vendor Name:	SCHINDLER AUFZUGE UND FAHRTREP	Base And All Options Value:	$0.00
		Action Obligation:	$34000.00

AWARD ID:	4740-[illegible]	Doc Type:	DCA
Mod Number:	P008	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 ALLEGHENY	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$58000.00

AWARD ID:	4740-[illegible]	Doc Type:	DCA
Mod Number:	P006	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 ALLEGHENY	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$83000.00

AWARD ID:	4740-[illegible]	Doc Type:	DCA
Mod Number:	P005	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 ALLEGHENY	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$268000.00

AWARD ID:	4740-[illegible]	Doc Type:	DCA
Mod Number:	P003	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 ALLEGHENY	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$110000.00

AWARD ID:	9700-[illegible]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:		NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$46284.00

49 Documents Found — Previous 21 - 30 Of 49 Next

AWARD Search Results

49 Documents Found — Previous 31 - 40 Of 49 Next

AWARD ID:	8700-DADA188MC0018	Doc Type:	DCA
Mod Number:	P00011	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	WALTER REED ARMY MEDICAL CENTER	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$137280.00
AWARD ID:	4740-[illegible]	Doc Type:	PO
Mod Number:	PC10	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	236960
Vendor Name:	SCHINDLER ELEVATOR	Base And All Options Value:	$220478.00
		Action Obligation:	$220478.00
AWARD ID:	4740-[illegible]	Doc Type:	PO
Mod Number:	PC09	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	236960
Vendor Name:	SCHINDLER ELEVATOR	Base And All Options Value:	$368000.00
		Action Obligation:	$368000.00
AWARD ID:	3352-JFKC11[illegible]	Doc Type:	PO
Mod Number:	71	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$25000.00
AWARD ID:	3352-JFKC11[illegible]	Doc Type:	PO
Mod Number:	69	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$25000.00
AWARD ID:	3352-JFKC11[illegible]	Doc Type:	PO
Mod Number:	70	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$70000.00
AWARD ID:	3352-JFKC11[illegible]	Doc Type:	PO
Mod Number:	72	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$42000.00
AWARD ID:	3352-JFKC11[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$238800.00
AWARD ID:	4740-K500019[illegible]	Doc Type:	DCA
Mod Number:	PO12	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	236960
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$217000.00
AWARD ID:	4740-K500019991[illegible]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98K5D0042
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$272000.00

49 Documents Found — Previous 31 - 40 Of 49 Next

AWARD Search Results

49 Documents Found

Previous 41 - 49 Of 49

AWARD ID:	4740-[illegible]	Doc Type:	DO
Mod Number:	P683	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	SAN FRANCISCO SERVICE CENTER	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$97800.00
AWARD ID:	[illegible]	Doc Type:	DCA
Mod Number:	P00011	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	NAVAL FACILITIES ENGINEERING COM	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$109428.00
AWARD ID:	[illegible]	Doc Type:	DCA
Mod Number:	P00010	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	DOD/DEPARTMENT OF THE NAVY	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$109428.00
AWARD ID:	[illegible]	Doc Type:	DCA
Mod Number:	14	Status:	Final
Agency Name:	NUCLEAR REGULATORY COMMISSION	Referenced IDV ID:	-
Office Name:	NUCLEAR REGULATORY COMMISSION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$27000.00
AWARD ID:	[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	NUCLEAR REGULATORY COMMISSION	Referenced IDV ID:	-
Office Name:	NUCLEAR REGULATORY COMMISSION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$203808.80
AWARD ID:	[illegible]	Doc Type:	PO
Mod Number:	P501	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$211000.00
AWARD ID:	[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0668)	Base And All Options Value:	$15450.00
		Action Obligation:	$15450.00
AWARD ID:	[illegible]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	SAN DIEGO PROPERTY MANAGEMENT OFFICE	NAICS Code:	235950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$266450.00
AWARD ID:	[illegible]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$13090.00

49 Documents Found

Previous 41 - 49 Of 49

AWARD Search Results

48 Documents Found 1 - 10 Of 48 Next

AWARD ID:	9760-0001	Doc Type:	DO
Mod Number:	4	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9760 MDA9479900065
Office Name:	PENREN	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$110000.00

AWARD ID:	1341-00[redacted]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY	Referenced IDV ID:	-
Office Name:	DEPT OF COMM/NAT INST STAND AND TECHNOL	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$25000.00

AWARD ID:	1341-00[redacted]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY	Referenced IDV ID:	-
Office Name:	DEPT OF COMM/NAT INST STAND AND TECHNOL	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$231000.00

AWARD ID:	3600-00[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V670P2018
Office Name:	VISN 2 CONSOLIDATED CONTRACTING	NAICS Code:	235950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$43000.00

AWARD ID:	3600-00[redacted]	Doc Type:	DO
Mod Number:	4	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V581C838
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	235950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$33000.00

AWARD ID:	3600-00[redacted]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$1032000.00

AWARD ID:	7529-00[redacted]	Doc Type:	PO
Mod Number:	1	Status:	Final
Agency Name:	NATIONAL INSTITUTES OF HEALTH	Referenced IDV ID:	-
Office Name:	DEPT OF HHS/NATIONAL INSTITUTES FOR HEALTH	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$12000.00

AWARD ID:	3600-00[redacted]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$66000.00

AWARD ID:	3600-00[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V624P1238
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$66000.00

AWARD ID:	3600-00[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V623P5811
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$47000.00

48 Documents Found 1 - 10 Of 48 Next

AWARD Search Results

42 Documents Found — Previous 11 - 20 Of 42 Next

AWARD ID:	3600-00[illegible]A	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$388000.00
AWARD ID:	2600-00[illegible]427	Doc Type:	PO
Mod Number:	3	Status:	Final
Agency Name:	SOCIAL SECURITY ADMINISTRATION	Referenced IDV ID:	-
Office Name:	HDQTRS - OFFICE OF ACQUISITION & GRANTS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$47000.00
AWARD ID:	3600-00[illegible]381	Doc Type:	DCA
Mod Number:	3	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	213320
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$68000.00
AWARD ID:	3600-00[illegible]1738	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V697P1738
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$53000.00
AWARD ID:	3600-00[illegible]2037	Doc Type:	DO
Mod Number:	0PT1	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V69D407P2037
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$47000.00
AWARD ID:	3600-00[illegible]1249	Doc Type:	BPA Call
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V69DP1340
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$29000.00
AWARD ID:	1210-01[illegible]10	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	USDA, OFFICE OF OPERATIONS	Referenced IDV ID:	-
Office Name:	DEPT OF AGRICULTURE/OPPM	NAICS Code:	561210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$316860.00
AWARD ID:	3300-19[illegible]1301	Doc Type:	DCA
Mod Number:	3	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$887000.00
AWARD ID:	3300-19[illegible]10331	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	3300-0836CW10331
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$112000.00
AWARD ID:	3300-19[illegible]10446	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	3300-0836CW10446
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$28000.00

42 Documents Found — Previous 11 - 20 Of 42 Next

AWARD Search Results

48 Documents Found — Previous 21 - 30 Of 48 Next

AWARD ID:	4740-[illegible]	Doc Type:	DCA
Mod Number:	PO10	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	561790
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$31910.00
		Action Obligation:	$31910.00
AWARD ID:	4740-[illegible]	Doc Type:	DCA
Mod Number:	P007	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	561790
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$191460.00
		Action Obligation:	$191460.00
AWARD ID:	4740-[illegible]	Doc Type:	DCA
Mod Number:	P009	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	561790
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$47886.00
		Action Obligation:	$47886.00
AWARD ID:	4740-[illegible]	Doc Type:	DCA
Mod Number:	P008	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	561790
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$47886.00
		Action Obligation:	$47886.00
AWARD ID:	4740-[illegible]	Doc Type:	DCA
Mod Number:	PC00	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 ALLEGHENY	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$13000.00
AWARD ID:	4740-[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 ALLEGHENY	NAICS Code:	238350
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$27000.00
		Action Obligation:	$27000.00
AWARD ID:	9700-[illegible]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:		NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$25930.00
AWARD ID:	9700-[illegible]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:		NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$50000.00
AWARD ID:	9700-[illegible]	Doc Type:	DCA
Mod Number:	P00013	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	WALTER REED ARMY MEDICAL CENTER	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$26182.90
AWARD ID:	9700-[illegible]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	US ARMY GARRISON, HAWAII	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$42825.00

48 Documents Found — Previous 21 - 30 Of 48 Next

AWARD Search Results

48 Documents Found | Previous | 31 - 40 Of 48 | Next

AWARD ID:	4740-EW0020001[illegible]	Doc Type:	PO
Mod Number:	PC14	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PROPERTY MANAGEMENT CONTRACTS	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$588139.00
		Action Obligation:	$588139.00

AWARD ID:	4740-EW0020001[illegible]	Doc Type:	PO
Mod Number:	PC13	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PROPERTY MANAGEMENT CONTRACTS	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$19680.00
		Action Obligation:	$19680.00

AWARD ID:	4740-QA[illegible]	Doc Type:	DCA
Mod Number:	P005	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF TENANT OPERATIONS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$17080.00

AWARD ID:	4740-QB[illegible]	Doc Type:	PO
Mod Number:	PC02	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	233320
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$33000.00

AWARD ID:	4740-QB[illegible]	Doc Type:	PO
Mod Number:	PC01	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	233320
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$31000.00

AWARD ID:	4740-HR[illegible]	Doc Type:	PO
Mod Number:	PC11	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR	Base And All Options Value:	$49000.00
		Action Obligation:	$49000.00

AWARD ID:	3352-JFKC1[illegible]	Doc Type:	PO
Mod Number:	5	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$44000.00

AWARD ID:	3352-JFKC1[illegible]	Doc Type:	PO
Mod Number:	4	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$210000.00

AWARD ID:	4740-KS[illegible]	Doc Type:	DCA
Mod Number:	P017	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$42000.00

AWARD ID:	4740-KS[illegible]	Doc Type:	DCA
Mod Number:	P018	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	561210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$54000.00

48 Documents Found | Previous | 31 - 40 Of 48 | Next

AWARD Search Results

38 Documents Found 1 - 10 Of 38 Next

AWARD ID:	9700-0001	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA847991D0065
Office Name:	PENREN	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$1782288.00

AWARD ID:	3600-0024220911080V832P2236	Doc Type:	PO
Mod Number:	01	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	VISN 2 CONSOLIDATED CONTRACTING	NAICS Code:	561790
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$44000.00

AWARD ID:	3600-0024220911080V832P2237	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	VISN 2 CONSOLIDATED CONTRACTING	NAICS Code:	235950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$31000.00

AWARD ID:	3600-0024220911080V832P2236	Doc Type:	DO
Mod Number:	4	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V829C836
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	235950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$33000.00

AWARD ID:	7529-0026310000502430000237	Doc Type:	PO
Mod Number:	4	Status:	Final
Agency Name:	NATIONAL INSTITUTES OF HEALTH	Referenced IDV ID:	-
Office Name:	DEPT OF HHS/NATIONAL INSTITUTES FOR HEALTH	NAICS Code:	541690
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$18000.00

AWARD ID:	3600-0058109710DV59BP4022	Doc Type:	DCA
Mod Number:	11	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	235950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$389900.00

AWARD ID:	3600-0048209112C848C201103V848C391	Doc Type:	DO
Mod Number:	8	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V848C391
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	236950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$137900.00

AWARD ID:	3600-0049D2091120C876C21001V89DP3240	Doc Type:	DO
Mod Number:	3	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V89DP3240
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	236950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$33000.00

AWARD ID:	1210-03142209110C4333142209019833142206019	Doc Type:	DO
Mod Number:	1	Status:	Final
Agency Name:	USDA, OFFICE OF OPERATIONS	Referenced IDV ID:	1215-83314206019
Office Name:	DEPT OF AGRICULTURE/OPPM	NAICS Code:	541210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$483900.00

AWARD ID:	1220-0B2FT209105B4342FT10211	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	FOREST SERVICE	Referenced IDV ID:	-
Office Name:	DEPT OF AGRIC/FOREST SERVICE	NAICS Code:	234990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$20000.00

38 Documents Found 1 - 10 Of 38 Next

AWARD Search Results

38 Documents Found — Previous 11 - 20 Of 38 Next

AWARD ID:	3300-1999018999[illegible]38CC10384	Doc Type:	DCA
Mod Number:	11	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$781000.00
AWARD ID:	3300-1999018999[illegible]38CC10384	Doc Type:	DCA
Mod Number:	9	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$73000.00
AWARD ID:	4740-GD0001998999DG903P99CDC0008	Doc Type:	DCA
Mod Number:	PD11	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 ALLEGHENY	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$300000.00
AWARD ID:	9700-DAPC[illegible]C0019	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	US ARMY GARRISON, HAWAII	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$78920.00
AWARD ID:	4740-EW0002000[illegible]P99QAC0148	Doc Type:	PO
Mod Number:	PC20	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PROPERTY MANAGEMENT CONTRACTS	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$465843.00
		Action Obligation:	$465843.00
AWARD ID:	4740-GA0001998[illegible]P99QAC0001	Doc Type:	DCA
Mod Number:	PC09	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF TENANT OPERATIONS	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$487000.00
AWARD ID:	4740-GB0002000[illegible]P99QBC0029	Doc Type:	PO
Mod Number:	PC08	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	233320
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$15000.00
AWARD ID:	4740-GB0002000[illegible]P99GBC0029	Doc Type:	PO
Mod Number:	PC07	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	233320
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$12000.00
AWARD ID:	4740-GB0002[illegible]P01GBC0044	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$4086000.00
AWARD ID:	3342-JFKC[illegible]P01P01099	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	811219
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$77000.00

38 Documents Found — Previous 11 - 20 Of 38 Next

AWARD Search Results

38 Documents Found — Previous 21 - 30 Of 38 Next

AWARD ID:	2352-JFKC1299107D-JFK99D0007	Doc Type:	PO
Mod Number:	14	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	811219
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$260000.00
AWARD ID:	2352-JFKC1299107D-JFK99D0007	Doc Type:	PO
Mod Number:	12	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	811219
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$15000.00
AWARD ID:	4740-GS09P99KSD0042	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	238960
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$102000.00
AWARD ID:	4740-GS09P99KSD0042	Doc Type:	DO
Mod Number:	P001	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	238960
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$102000.00
AWARD ID:	[redacted]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	PENBEN	NAICS Code:	238960
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$888000.00
AWARD ID:	[redacted]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	PENBEN	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$307704.00
AWARD ID:	[redacted]	Doc Type:	DCA
Mod Number:	4	Status:	Final
Agency Name:	NUCLEAR REGULATORY COMMISSION	Referenced IDV ID:	-
Office Name:	NUCLEAR REGULATORY COMMISSION	NAICS Code:	561790
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$162000.00
AWARD ID:	[redacted]	Doc Type:	PO
Mod Number:	6	Status:	Final
Agency Name:	NUCLEAR REGULATORY COMMISSION	Referenced IDV ID:	-
Office Name:	NUCLEAR REGULATORY COMMISSION	NAICS Code:	561790
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$163000.00
AWARD ID:	4740-P09P01KS0001GS09P98KSD0042	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	-
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$885417.68
AWARD ID:	4740-PQ09P99111DGS02P01PQM0020	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$37900.00

38 Documents Found — Previous 21 - 30 Of 38 Next

AWARD Search Results

38 Documents Found — Previous 31 - 38 Of 38

AWARD ID:	4740-PW0002001[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	236950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$161000.00

AWARD ID:	4740-QK0002001[illegible]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS03P98CDC0008
Office Name:	GSA/PBS/R03 PITTSBURG FO	NAICS Code:	561790
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$12000.00

AWARD ID:	4740-QK0002001[illegible]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS03P98CDC0028
Office Name:	GSA/PBS/R03 PITTSBURG FO	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$41000.00

AWARD ID:	4740-WN0001[illegible]	Doc Type:	DO
Mod Number:	PC06	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	SAN DIEGO PROPERTY MANAGEMENT OFFICE	NAICS Code:	236950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$58002.00

AWARD ID:	4740-WN0001[illegible]	Doc Type:	DO
Mod Number:	PC04	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	SAN DIEGO PROPERTY MANAGEMENT OFFICE	NAICS Code:	236950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$833801.00

AWARD ID:	4740-XC0002001[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	236950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$34000.00

AWARD ID:	4740-XC0002001[illegible]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	235990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$22000.00

AWARD ID:	4740-XF0002001[illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	236950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$38000.00

38 Documents Found — Previous 31 - 38 Of 38

Exhibit C to Complaint—
Millar Elevator Contracts 1999 through 2001

AWARD Search Results

2 Documents Found 1 - 2 Of 2

AWARD ID:	7529 9926315598 03C03OD5933500026 3990102	Doc Type:	DO
Mod Number:	6	Status:	Final
Agency Name:	NATIONAL INSTITUTES OF HEALTH	Referenced IDV ID:	7529-263980102
Office Name:	DEPT OF HHS/NATIONAL INSTITUTES FOR HEALTH	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$24000.00

AWARD ID:	4749 BW9901 99212 DGS01P 92BWC0144	Doc Type:	DCA
Mod Number:	P007	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$106000.00

2 Documents Found 1 - 2 Of 2

AWARD Search Results

8 Documents Found 1 - 8 Of 8

AWARD ID:	3600-00243199999DV627P5337	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$198000.00
AWARD ID:	3600-00243199910C681C02073V581C538	Doc Type:	DO
Mod Number:	6	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V581C538
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$29000.00
AWARD ID:	4740-DW00199308DG501P13DWC0081	Doc Type:	DCA
Mod Number:	P008	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$84000.00
AWARD ID:	4740-DW00199710DG501P98BZC0424	Doc Type:	PO
Mod Number:	P526	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$47000.00
AWARD ID:	4740-DW00199710DG501P98BZC0424	Doc Type:	PO
Mod Number:	P526	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$37000.00
AWARD ID:	4740-DW00199912CP0100DZ0001G501P98BZC0037	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-G501P98BZC0037
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$72000.00
AWARD ID:	4740-DW00199912CP0100DZ0003G501P98BZC0037	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-G501P98BZC0037
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$25000.00
AWARD ID:	4740-DZ00199904CP0199BZ0001G501P98BZC0424	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-G501P98BZC0424
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$10000.00

8 Documents Found 1 - 8 Of 8

AWARD Search Results

8 Documents Found 1 - 8 Of 8

AWARD ID:	4740-BW0001997[illegible]BGS01P88BZC0424	Doc Type:	PO
Mod Number:	P531	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$19000.00

AWARD ID:	4740-BW0002000[illegible]CP0100BZ0003GS01P89BZC0037	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS01P89BZC0037
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$689000.00

AWARD ID:	4740-BW0002000[illegible]DGS01P00BWC0123	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	561790
Vendor Name:	MILLAR ELEVATOR SERVICE COMPAN	Base And All Options Value:	$511000.00
		Action Obligation:	$511000.00

AWARD ID:	4740-NA0002000[illegible]CP0100BZ0006GS01P89BZC0037	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS01P89BZC0037
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$24000.00

AWARD ID:	4740-NA0002000[illegible]CP0100BZ0001GS01P89BZC0037	Doc Type:	DO
Mod Number:	PC01	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS01P89BZC0037
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$10000.00

AWARD ID:	4740-NA0002000[illegible]CP0100BZ0006GS01P89BZC0037	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS01P89BZC0037
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$60000.00

AWARD ID:	4740-NA0002000[illegible]CP0101BZ0001GS01P89BZC0037	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS01P89BZC0037
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	236960
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$37000.00

AWARD ID:	4740-NA0002000[illegible]CP0101BZ0003GS01P89BZC0037	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS01P89BZC0037
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	236960
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$23000.00

8 Documents Found 1 - 8 Of 8

AWARD Search Results

3 Documents Found

1 - 3 Of 3

AWARD ID:	4740-K5000200103CP0999K50001GS09P98KSD0042	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	238950
Vendor Name:	MILLAR ELEVATOR SERVICE COMPAN	Base And All Options Value:	$0.00
		Action Obligation:	$163000.00

AWARD ID:	4740-NA000200102CP0101BZ0000GS01P99BZC0037	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS01P99BZC0037
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	333921
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$12000.00

AWARD ID:	4740-NA000200103CP0101NA01B3GS01P00BWC0139	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS01P00BWC0139
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	561790
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$68000.00

3 Documents Found

1 - 3 Of 3

Exhibit D to Complaint—
Schindler Elevator Contracts 2002 through 2006

AWARD Search Results

34 Documents Found 1 - 10 Of 34 Next

AWARD ID:	9700-0001	Doc Type:	DO
Mod Number:	7	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA94791D0063
Office Name:	PENREN	NAICS Code:	233320
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$60000.00

AWARD ID:	9700-0002	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA94791D0063
Office Name:	PENREN	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$3982388.00

AWARD ID:	9700-0003	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA94791D0063
Office Name:	PENRLN	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$2682396.00

AWARD ID:	3600-0024220971 0C0 0BC322014V6322737	Doc Type:	DO
Mod Number:	BA2	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V632P2737
Office Name:	VISN 7 CONSOLIDATED CONTRACTING	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$31600.00

AWARD ID:	3600-0024320020 0DV18N3P1000	Doc Type:	PO
Mod Number:	1	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	235950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$132900.00

AWARD ID:	3600-0050 0 2 0 0 2 7 1 C 0 0 C 2 1 0 2 1 V 0 0 6 P 3 2 3 8	Doc Type:	DO
Mod Number:	3	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V606P3238
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$83000.00

AWARD ID:	3600-0050 0 2 0 0 2 7 0 C 0 0 C 2 1 0 1 1 V 0 0 6 P 3 2 3 8	Doc Type:	DO
Mod Number:	4	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V606P3238
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$59688.00

AWARD ID:	3600-0057 3 2 0 0 2 0 1 D V 6 7 3 P 5 9 4 0	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	NFISG VETERANS HEALTH SYSTEM	NAICS Code:	235950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$224000.00

AWARD ID:	3600-0050 0 2 0 0 2 0 7 0 V 0 4 [illegible] C 2 0 0 0 6 0 0 C 2 5 6 5 8	Doc Type:	BPA Call
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-0500C25658
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	327910
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$84000.00

AWARD ID:	3600-0050 0 2 0 0 2 1 0 C 0 0 7 C 2 0 0 0 6 V 0 0 P 2 8 3 7	Doc Type:	DO
Mod Number:	OPT3	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V606P2837
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$48384.00

34 Documents Found 1 - 10 Of 34 Next

AWARD Search Results

34 Documents Found — Previous 11 - 20 Of 34 Next

AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	OPT2	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V661P3240
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$34344.00

AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	3300-02J6CW10273
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$26000.00

AWARD ID:	[redacted]	Doc Type:	PO
Mod Number:	P00002	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:		NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$84758.00

AWARD ID:	[redacted]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:		NAICS Code:	421830
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$129800.00

AWARD ID:	[redacted]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	US ARMY MEDICAL RESEARCH ACQ ACT	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$239960.00

AWARD ID:	[redacted]	Doc Type:	DCA
Mod Number:	P00008	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	US ARMY GARRISON, HAWAII	NAICS Code:	541210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$91884.00

AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS06P96GXC0145
Office Name:	GSA/PROPERTY MANAGEMENT CONTRACTS	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$84000.00

AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS06P96GXC0145
Office Name:	GSA/PROPERTY MANAGEMENT CONTRACTS	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$230000.00

AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS06P96GXC0145
Office Name:	GSA/PROPERTY MANAGEMENT CONTRACTS	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$59000.00

AWARD ID:	[redacted]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF TENANT OPERATIONS	NAICS Code:	541780
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$93600.00

34 Documents Found — Previous 11 - 20 Of 34 Next

AWARD Search Results

34 Documents Found | Previous 21 - 30 Of 34 | Next

AWARD ID:	4740-GS01P02HLC0047	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$36006.00
		Action Obligation:	$36006.00

AWARD ID:	4740-JC09200204BGS06P96QXC0145	Doc Type:	PO
Mod Number:	P327	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$37988.23
		Action Obligation:	$37988.23

AWARD ID:	4740-JC09200204BGS06P96QXC0145	Doc Type:	PO
Mod Number:	P326	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$117816.00
		Action Obligation:	$117816.00

AWARD ID:	4740-JC09200204BGS06P96QXC0145	Doc Type:	PO
Mod Number:	P323	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$187840.00
		Action Obligation:	$187840.00

AWARD ID:	4740-JC09200204BGS06P96QXC0145	Doc Type:	PO
Mod Number:	P022	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$2188847.80
		Action Obligation:	$2188847.80

AWARD ID:	4740-K50402892207CP0002K50001QS09P98KSD0042	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-QS09P98KSD0042
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	236110
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$821000.00

AWARD ID:	9700-MDA94702P0006	Doc Type:	PO
Mod Number:	P00003	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	PENREN	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$96000.00

AWARD ID:	9700-MDA94702P0005	Doc Type:	PO
Mod Number:	P00001	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	PENREN	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$87618.00

AWARD ID:	9700-MDA94702P0042	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	PENREN	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$48400.00

AWARD ID:	4740-PW09199100BGS02P94PWC0044	Doc Type:	PO
Mod Number:	P007	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$232000.00

34 Documents Found | Previous 21 - 30 Of 34 | Next

AWARD Search Results

34 Documents Found — Previous 31 - 34 Of 34

AWARD ID:	4740-WN00020020[illegible]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	SANSOME STREET PROPERTY MANAGEMENT OFFICE	NAICS Code:	233320
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$39000.00

AWARD ID:	4740-WN00018[illegible]	Doc Type:	DO
Mod Number:	P810	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	SAN DIEGO PROPERTY MANAGEMENT OFFICE	NAICS Code:	236960
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$85536.00

AWARD ID:	4740-WN00018[illegible]	Doc Type:	DO
Mod Number:	PC06	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	SAN DIEGO PROPERTY MANAGEMENT OFFICE	NAICS Code:	236960
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$338600.00

AWARD ID:	4740-WN00018[illegible]	Doc Type:	DO
Mod Number:	PC02	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	SAN DIEGO PROPERTY MANAGEMENT OFFICE	NAICS Code:	236960
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$338600.00

34 Documents Found — Previous 31 - 34 Of 34

AWARD Search Results

81 Documents Found 1 - 10 Of 81 Next

AWARD ID:	9700-9003	Doc Type:	DO
Mod Number:	4	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9479D0063
Office Name:	PENREN	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$2578314.00

AWARD ID:	9700-9003	Doc Type:	DO
Mod Number:	3	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9479D0063
Office Name:	PENREN	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$46038.00

AWARD ID:	9700-9004	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9479D0063
Office Name:	PENREN	NAICS Code:	333911
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$418117.00

AWARD ID:	1425-0004P2003B03PG4P4420	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	BUREAU OF RECLAMATION	Referenced IDV ID:	-
Office Name:	UC POWER OFFICE	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$77060.00

AWARD ID:	9700-0005	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9479D0063
Office Name:	PENREN	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$277258.00

AWARD ID:	1310-0004AB200309BAB133E935E1049	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	Referenced IDV ID:	-
Office Name:	DEPT OF COMMERCE NAT OCEAN AND ATMOS ADMIN	NAICS Code:	541990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$81387.00

AWARD ID:	3600-0034220020C320C32015V532P2237	Doc Type:	DO
Mod Number:	SA1	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V532P2237
Office Name:	VISN 2 CONSOLIDATED CONTRACTING	NAICS Code:	235950
Vendor Name:	SCHINDLER ELEVATOR	Base And All Options Value:	$0.00
		Action Obligation:	$39600.00

AWARD ID:	3600-0024220020C320C32037V10N3P1068	Doc Type:	DO
Mod Number:	1	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V10N3P1068
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	561210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$296319.00

AWARD ID:	3600-0004220020DV0[illegible]C458	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	233320
Vendor Name:	SCHINDLER ELEVATOR	Base And All Options Value:	$0.00
		Action Obligation:	$178183.00

AWARD ID:	3600-0003320020A598C3600EV09SP4022	Doc Type:	BPA Call
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V09SP4022
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	235950
Vendor Name:	SCHINDLER ELEVATOR	Base And All Options Value:	$0.00
		Action Obligation:	$199740.00

81 Documents Found 1 - 10 Of 81 Next

AWARD Search Results

61 Documents Found — Previous 11 - 20 Of 61 Next

AWARD ID:	3600-0058200304C598C38341Q506F0079N	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F0078M
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$88700.00
AWARD ID:	3600-0058200304C629C31810GS06F0079N	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F0078M
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$82178.00
AWARD ID:	3600-0044820030 3C040C20106V040C391	Doc Type:	DO
Mod Number:	6	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V040C391
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CO	Base And All Options Value:	$0.00
		Action Obligation:	$27800.00
AWARD ID:	3300-1000018000D0036CC10384	Doc Type:	DCA
Mod Number:	16	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORP	Base And All Options Value:	$0.00
		Action Obligation:	$243827.00
AWARD ID:	3300-1000018000D0036CC10384	Doc Type:	DCA
Mod Number:	13	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$387000.00
AWARD ID:	3300-1000020030C0036CC10384G336CW10483	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	3300-0336CW10483
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$109840.00
AWARD ID:	3300-1000020030C0036CC10384G336CW10498	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	3300-0336CW10498
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$78417.00
AWARD ID:	3600-070C41003	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V89DP3340
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$168308.00
		Action Obligation:	$38424.00
AWARD ID:	3300-0036CC10384	Doc Type:	DCA
Mod Number:	17	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$3385871.67
		Action Obligation:	$294763.43
AWARD ID:	1200 AG3142A33142405017	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	USDA, ASSISTANT SECRETARY FOR ADMINISTRATION	Referenced IDV ID:	-
Office Name:	USDA, OPPM, PROCUREMENT OPERATIONS DIVISION	NAICS Code:	561210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$486000.00
		Action Obligation:	$486000.00

61 Documents Found — Previous 11 - 20 Of 61 Next

AWARD Search Results

61 Documents Found | Previous 21 - 30 Of 61 Next

AWARD ID:	1900-BE700700303DSBE20003C0009	Doc Type:	DCA
Mod Number:	3	Status:	Final
Agency Name:	STATE, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	AMERICAN EMBASSY- BRUSSELS	NAICS Code:	333921
Vendor Name:	SCHINDLER	Base And All Options Value:	$47373.00
		Action Obligation:	$47373.00
AWARD ID:	1900-BE200700303DSBE20003C0009	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	STATE, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	AMERICAN EMBASSY- BRUSSELS	NAICS Code:	333921
Vendor Name:	SCHINDLER	Base And All Options Value:	$0.00
		Action Obligation:	$40000.00
AWARD ID:	4740-[illegible]	Doc Type:	DCA
Mod Number:	P004	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	561790
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$189824.00
		Action Obligation:	$189824.00
AWARD ID:	4740-[illegible]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS01P06BWC0139
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$33698.00
AWARD ID:	9702-DADK11I03C0001	Doc Type:	DCA
Mod Number:	P00008	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	XR W6BB ACA GORDON	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$98138.00
AWARD ID:	9700-DADK11I03C0001	Doc Type:	DCA
Mod Number:	P00001	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	ACA, FORT GORDON	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$80939.00
AWARD ID:	9700-DACW29[illegible]	Doc Type:	PO
Mod Number:	P00003	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:		NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$29184.00
AWARD ID:	9700-DAPC[illegible]	Doc Type:	DCA
Mod Number:	P00007	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	ACA, FORT SHAFTER	NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$33344.00
AWARD ID:	4740-[illegible]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS06P06GXC0145
Office Name:	GSA/PROPERTY MANAGEMENT CONTRACTS	NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$347340.00
AWARD ID:	3300-F03[illegible]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	3300-F99[illegible]
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0080)	Base And All Options Value:	$421584.00
		Action Obligation:	$421584.00

61 Documents Found | Previous 21 - 30 Of 61 Next

AWARD Search Results

91 Documents Found | Previous 31 - 40 Of 91 | Next

AWARD ID:	3600-F07029	Doc Type:	DO
Mod Number:	2	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V643P2843
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$39820.00
		Action Obligation:	$39820.00
AWARD ID:	3600-F07029	Doc Type:	DO
Mod Number:	1	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V643P2843
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$49400.00
		Action Obligation:	$49400.00
AWARD ID:	[redacted]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	OGDEN ALC/PKO	NAICS Code:	561790
Vendor Name:	SCHINDLER, R ANDREW	Base And All Options Value:	$0.00
		Action Obligation:	$107187.00
AWARD ID:	[redacted]	Doc Type:	PO
Mod Number:	PC68	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF TENANT OPERATIONS	NAICS Code:	236960
Vendor Name:	SCHINDLER ELEVATOR CORP.	Base And All Options Value:	$0.00
		Action Obligation:	$109691.00
AWARD ID:	[redacted]	Doc Type:	DCA
Mod Number:	PC10	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$32611.00
AWARD ID:	[redacted]	Doc Type:	DCA
Mod Number:	PC10	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$384001.00
AWARD ID:	[redacted]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	STATE, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	AM CONS GEN - FRANKFURT AM MAIN	NAICS Code:	333921
Vendor Name:	SCHINDLER NV	Base And All Options Value:	$0.00
		Action Obligation:	$25817.00
AWARD ID:	[redacted]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$30447.80
		Action Obligation:	$30447.80
AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS03P98CDC0008
Office Name:	GSA/PBS/R03 PITTSBURG FO	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$28783.14
		Action Obligation:	$28783.14
AWARD ID:	[redacted]	Doc Type:	DCA
Mod Number:	PC22	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	238950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$62734.22
		Action Obligation:	$62734.22

91 Documents Found | Previous 31 - 40 Of 91 | Next

AWARD Search Results

61 Documents Found — Previous 41 - 60 Of 61 — Next

AWARD ID:	4740 GS06P09GBC0044	Doc Type:	DCA
Mod Number:	17	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	236960
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0658)	Base And All Options Value:	$238460.00
		Action Obligation:	$238460.00
AWARD ID:	4740 GS10P07LSC1020	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$442781.16
		Action Obligation:	$442781.16
AWARD ID:	1422 [redacted]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	BUREAU OF LAND MANAGEMENT	Referenced IDV ID:	-
Office Name:	WO-WASHINGTON OFFICE	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0658)	Base And All Options Value:	$31337.00
		Action Obligation:	$31337.00
AWARD ID:	4740 [redacted]	Doc Type:	PO
Mod Number:	PS28	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$713914.08
		Action Obligation:	$713914.08
AWARD ID:	3342 [redacted]	Doc Type:	PO
Mod Number:	23	Status:	Final
Agency Name:	J. F. KENNEDY CENTER FOR THE PERFORMING ARTS	Referenced IDV ID:	-
Office Name:	J.F. KENNEDY CENTER FOR THE PERFORMING ARTS	NAICS Code:	811219
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$258739.00
AWARD ID:	2000 [redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	INTERNAL REVENUE SERVICE	Referenced IDV ID:	4730 GS04F0078M
Office Name:	DEPT OF TREAS/INTERNAL REVENUE SERVICE	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$327884.80
AWARD ID:	1650 3ALV90004M0000	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	STATE, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	AMERICAN EMBASSY VIENNA	NAICS Code:	541990
Vendor Name:	SCHINDLER AUFZUGE UND FAHRTREP	Base And All Options Value:	$28067.32
		Action Obligation:	$28067.32
AWARD ID:	2000 TIRNO04T00001	Doc Type:	DO
Mod Number:	2	Status:	Final
Agency Name:	INTERNAL REVENUE SERVICE	Referenced IDV ID:	4730 GS04F0078M
Office Name:	DEPT OF TREAS/INTERNAL REVENUE SERVICE	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$3301904.00
AWARD ID:	2000 TIRNO04T00001	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	INTERNAL REVENUE SERVICE	Referenced IDV ID:	4730 GS04F0078M
Office Name:	DEPT OF TREAS/INTERNAL REVENUE SERVICE	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$1811048.60
		Action Obligation:	$327884.00
AWARD ID:	3400 V692C44031	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730 GS06F0078M
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$49493.90
		Action Obligation:	$49493.90

61 Documents Found — Previous 41 - 60 Of 61 — Next

AWARD Search Results

61 Documents Found — Previous 61 - 80 Of 61 Next

AWARD ID:	3600-V598P2799	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$411046.80
		Action Obligation:	$92583.00
AWARD ID:	3600-V649C469310	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F0078M
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$127962.00
		Action Obligation:	$127962.00
AWARD ID:	3600-V673P5230	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	NFSD VETERANS HEALTH SYSTEM	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$186321.60
		Action Obligation:	$37664.00
AWARD ID:	3600-V660C49079	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F0078M
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$72284.00
		Action Obligation:	$72284.00
AWARD ID:	3600-V607C49097	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V580P2837
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$49128.00
		Action Obligation:	$49128.00
AWARD ID:	3600-V626C49038	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$169270.00
		Action Obligation:	$169270.00
AWARD ID:	3600-V626C49039	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V610K3P1008
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	541210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$1008842.00
		Action Obligation:	$63843.00
AWARD ID:	3600-V645W57029	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V645P2842
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$39520.00
		Action Obligation:	$39520.00
AWARD ID:	3600-V607C49010	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F0078M
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$58449.60
		Action Obligation:	$58449.60
AWARD ID:	3600-V570P4933	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811219
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$168308.80
		Action Obligation:	$38424.00

61 Documents Found — Previous 61 - 80 Of 61 Next

AWARD Search Results

61 Documents Found — Previous 61 - 61 Of 61

AWARD ID:	4740-WN0061999911CPS900WH0098GS09P98KSD0042	Doc Type:	DO
Mod Number:	P911	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	SAN DIEGO PROPERTY MANAGEMENT OFFICE	NAICS Code:	235950
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$999997.00

61 Documents Found — Previous 61 - 61 Of 61

AWARD Search Results

60 Documents Found 1 - 10 Of 60 Next

AWARD ID:	9700 0009	Doc Type:	DO
Mod Number:	1	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700 MDA9479SD0083
Office Name:	OSD WHS REAL ESTATE AND FACILITIES	NAICS Code:	236210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$44382.00

AWARD ID:	9700 0009	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700 MDA9479SD0083
Office Name:	OSD WHS REAL ESTATE AND FACILITIES	NAICS Code:	236210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$449819.00

AWARD ID:	3600 0624120030910630C3003ZY10N3P1008	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600 V10N3P1008
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	541210
Vendor Name:	SCHINDLER ELEVATOR	Base And All Options Value:	$233188.00
		Action Obligation:	$233188.00

AWARD ID:	3300 0438CW10007	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$141964.60
		Action Obligation:	$141964.60

AWARD ID:	3300 0438CW10418	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$28522.00
		Action Obligation:	$28522.00

AWARD ID:	3300 0534CW10045	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$38670.80
		Action Obligation:	$38670.80

AWARD ID:	3300 0534CC10304	Doc Type:	DCA
Mod Number:	21	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$253158.20
		Action Obligation:	$253158.20

AWARD ID:	3300 0534CC10304	Doc Type:	DCA
Mod Number:	20	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$41999.76
		Action Obligation:	$41999.76

AWARD ID:	3300 0534CC10304	Doc Type:	DCA
Mod Number:	19	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0084)	Base And All Options Value:	$847043.13
		Action Obligation:	$847043.13

AWARD ID:	1210 AG31424331420B0019	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	USDA, ASSISTANT SECRETARY FOR ADMINISTRATION	Referenced IDV ID:	1210 43394208019
Office Name:	USDA, OAPM, PROCUREMENT OPERATIONS DIVISION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$2443982.16
		Action Obligation:	$439943.16

60 Documents Found 1 - 10 Of 60 Next

AWARD Search Results

86 Documents Found — Previous 11 - 20 Of 86 Next

AWARD ID:	1200 AG2142A3314250001?	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	USDA, ASSISTANT SECRETARY FOR ADMINISTRATION	Referenced IDV ID:	-
Office Name:	USDA, OPPM, PROCUREMENT OPERATIONS DIVISION	NAICS Code:	541210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$489968.16
		Action Obligation:	$489968.16

AWARD ID:	9700 DABK11?3C0001	Doc Type:	DCA
Mod Number:	P00010	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	XR W88B ACA GORDON	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$98217.00

AWARD ID:	9700 DAPC6091C0010	Doc Type:	DCA
Mod Number:	P00013	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	Ft Shafter	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$81476.96

AWARD ID:	9700 DAPC5091C0010	Doc Type:	DCA
Mod Number:	P00010	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	Ft Shafter	NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$134938.00

AWARD ID:	9700 DAPC5091C0010	Doc Type:	DCA
Mod Number:	P00008	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	-
Office Name:	Ft Shafter	NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$48273.00

AWARD ID:	6820 OTFH6194F90012	Doc Type:	DO
Mod Number:	1	Status:	Final
Agency Name:	FEDERAL HIGHWAY ADMINISTRATION	Referenced IDV ID:	4730-GS06F8079B
Office Name:	OFFICE OF ACQUISITION MANAGEMENT	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$84132.00
		Action Obligation:	$84132.00

AWARD ID:	6820 OTFH6194F90113	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	FEDERAL HIGHWAY ADMINISTRATION	Referenced IDV ID:	4730-GS06F8079B
Office Name:	OFFICE OF ACQUISITION MANAGEMENT	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$84132.00
		Action Obligation:	$84132.00

AWARD ID:	3399 F04CW10493	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$308942.80
		Action Obligation:	$308942.80

AWARD ID:	4740 GS01P04NLC0002	Doc Type:	DCA
Mod Number:	PC03	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$29400.00
		Action Obligation:	$29400.00

AWARD ID:	4740 GS03P05GBM0020	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS/R03 SCRANTON & WILKES BARRE FO	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$95486.00
		Action Obligation:	$95486.00

86 Documents Found — Previous 11 - 20 Of 86 Next

AWARD Search Results

80 Documents Found — Previous 21 - 30 Of 80 Next

AWARD ID:	4740 GS09P09GDC0044	Doc Type:	DCA
Mod Number:	PC38	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$36796.02
		Action Obligation:	$36796.02
AWARD ID:	4740 GS09P09GDC0044	Doc Type:	DCA
Mod Number:	PC27	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$136779.84
		Action Obligation:	$136779.84
AWARD ID:	4740 GS09P09GDC0044	Doc Type:	DCA
Mod Number:	PC23	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$184843.48
		Action Obligation:	$184843.48
AWARD ID:	4740 GS09P04SLM0022	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF TENANT OPERATIONS	NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$48182.00
		Action Obligation:	$48182.00
AWARD ID:	1425 [illegible]	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	BUREAU OF RECLAMATION	Referenced IDV ID:	-
Office Name:	BOULDER CITY REGIONAL OFFICE	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$93360.00
		Action Obligation:	$93360.00
AWARD ID:	4740 [illegible]	Doc Type:	PO
Mod Number:	PO37	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$152776.56
		Action Obligation:	$152776.56
AWARD ID:	4740 [illegible]	Doc Type:	PO
Mod Number:	P034	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$38298.06
		Action Obligation:	$38298.06
AWARD ID:	4740 [illegible]	Doc Type:	PO
Mod Number:	PO33	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	GSA/PBS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$124756.87
		Action Obligation:	$124756.87
AWARD ID:	3100 [illegible]	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	NUCLEAR REGULATORY COMMISSION	Referenced IDV ID:	-
Office Name:	NUCLEAR REGULATORY COMMISSION	NAICS Code:	561210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$1029068.00
		Action Obligation:	$178348.00
AWARD ID:	4740 [illegible]	Doc Type:	DO
Mod Number:	P501	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740 GS09P98KSD0042
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$1310834.16
		Action Obligation:	$856417.08

80 Documents Found — Previous 21 - 30 Of 80 Next

AWARD Search Results

86 Documents Found | Previous 31 - 40 Of 86 Next

AWARD ID:	4740-P9904WL0037	Doc Type:	DO
Mod Number:	6	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P99BKSD0042
Office Name:	NORTH SPRING STREET PROPERTY MANAGEMENT OFFICE	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$47048.04
		Action Obligation:	$47048.04
AWARD ID:	1999 SAUP99064N159	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	STATE, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	AMERICAN EMBASSY VIENNA	NAICS Code:	541990
Vendor Name:	SCHINDLER AUFZUEGE	Base And All Options Value:	$29634.31
		Action Obligation:	$29634.31
AWARD ID:	2050 TIRNO04T00001	Doc Type:	DO
Mod Number:	8	Status:	Final
Agency Name:	INTERNAL REVENUE SERVICE	Referenced IDV ID:	4730-GS06F0079M
Office Name:	DEPT OF TREAS/INTERNAL REVENUE SERVICE	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$258813.00
AWARD ID:	2050 TIRNO04T00001	Doc Type:	DO
Mod Number:	7	Status:	Final
Agency Name:	INTERNAL REVENUE SERVICE	Referenced IDV ID:	4730-GS06F0079M
Office Name:	DEPT OF TREAS/INTERNAL REVENUE SERVICE	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$87743.00
AWARD ID:	3600 V502C04075	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F0079M
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$188000.00
		Action Obligation:	$48814.68
AWARD ID:	3600 V503C278	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$816800.00
		Action Obligation:	$816800.00
AWARD ID:	3600 V504C01039	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V506P3706A
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$411048.80
		Action Obligation:	$99384.00
AWARD ID:	3600 V529C62056	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	VISN 2 CONSOLIDATED CONTRACTING	NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$47480.00
		Action Obligation:	$47480.00
AWARD ID:	3600 V548E40396	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F0079M
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$120000.00
		Action Obligation:	$120000.00
AWARD ID:	3600 V549L50118	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F0079M
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$120000.00
		Action Obligation:	$120000.00

86 Documents Found | Previous 31 - 40 Of 86 Next

AWARD Search Results

60 Documents Found — Previous 41 - 60 Of 60

AWARD ID:	3600 V972P5239	Doc Type:	DCA
Mod Number:	1	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	NF/SC VETERANS HEALTH SYSTEM	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0088)	Base And All Options Value:	$38181.82
		Action Obligation:	$38181.82
AWARD ID:	3400 V998C48401	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F007BM
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$73204.00
		Action Obligation:	$73204.00
AWARD ID:	3400 V999C60053	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F007BM
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$148811.84
		Action Obligation:	$148811.84
AWARD ID:	3600 V910C091	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	238290
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0058)	Base And All Options Value:	$37342.88
		Action Obligation:	$37342.88
AWARD ID:	3400 V929C01871	Doc Type:	PO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0088)	Base And All Options Value:	$179418.00
		Action Obligation:	$179418.00
AWARD ID:	3600 V930C40248	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V10N3P1008
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	561210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$1608802.00
		Action Obligation:	$160925.00
AWARD ID:	3600 V830C40770	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V10N3P1008
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	561210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$1608026.00
		Action Obligation:	$160925.00
AWARD ID:	3600 V830C50009	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V10N3P1008
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0088)	Base And All Options Value:	$233188.00
		Action Obligation:	$233188.00
AWARD ID:	3600 V887C50019	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F007BM
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$64760.56
		Action Obligation:	$64760.56
AWARD ID:	3600-V810D07C60049	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V810P3240
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$168300.00
		Action Obligation:	$35984.06

60 Documents Found — Previous 41 - 60 Of 60

AWARD Search Results

18 Documents Found | 1 - 10 Of 18 | Next

AWARD ID:	9700-0008	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA947990D0048
Office Name:	WASHINGTON HEADQUARTERS SERVICES	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$167000.00
AWARD ID:	9700-0007	Doc Type:	DO
Mod Number:	1	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA947990D0083
Office Name:	WASHINGTON HEADQUARTERS SERVICES	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$111178.00
AWARD ID:	9700-0009	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA947990D0083
Office Name:	WASHINGTON HEADQUARTERS SERVICES	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$4398823.00
AWARD ID:	4740-4740DSP99063Y9095	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4730-GS06F007BM
Office Name:	OFFICE OF TENANT OPERATIONS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$718820.00
		Action Obligation:	$718820.00
AWARD ID:	3300-9936CC10384	Doc Type:	DCA
Mod Number:	23	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	-
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$136332.88
		Action Obligation:	$136332.88
AWARD ID:	3300-F0636CW10634	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	3300-9-0636CC10259
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$147216.00
		Action Obligation:	$147216.00
AWARD ID:	4740-Q306P99CQ0W0034	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	OFFICE OF PROPERTY DEVELOPMENT	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$182328.00
		Action Obligation:	$182328.00
AWARD ID:	3100-NRC1004390	Doc Type:	DCA
Mod Number:	M002	Status:	Final
Agency Name:	NUCLEAR REGULATORY COMMISSION	Referenced IDV ID:	-
Office Name:	NUCLEAR REGULATORY COMMISSION	NAICS Code:	561210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$190718.00
		Action Obligation:	$190718.00
AWARD ID:	4740-P99B9KS001	Doc Type:	DO
Mod Number:	P00E	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P99BKSD0042
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$688148.80
		Action Obligation:	$288372.80
AWARD ID:	3600-V604P3700	Doc Type:	DCA
Mod Number:	M002	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$105984.00
		Action Obligation:	$105984.00

18 Documents Found | 1 - 10 Of 18 | Next

AWARD Search Results

18 Documents Found | Previous | 11 - 15 Of 15

AWARD ID:	3600 V510C0181	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	333921
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (8056)	Base And All Options Value:	$291222.00
		Action Obligation:	$291222.00
AWARD ID:	3600 V530C1111	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (8056)	Base And All Options Value:	$388300.00
		Action Obligation:	$388300.00
AWARD ID:	3600 V530C65010	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-0506F0078M
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$154656.28
		Action Obligation:	$154656.28
AWARD ID:	3600 V530C60122	Doc Type:	DO
Mod Number:	13	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	3600-V10H3P1008
Office Name:	DEPARTMENT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (8056)	Base And All Options Value:	$1008602.00
		Action Obligation:	$232200.00
AWARD ID:	3600 V540F55126	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	-
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	238990
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$169005.00
		Action Obligation:	$169005.00

18 Documents Found | Previous | 11 - 15 Of 15

AWARD Search Results

21 Documents Found | 1 - 10 Of 21 | Next

AWARD ID:	9700-0004	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9470DD0002
Office Name:	WASHINGTON HEADQUARTERS SERVICES	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$1154384.00

AWARD ID:	9700-0007	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9470DD0002
Office Name:	WASHINGTON HEADQUARTERS SERVICES	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$1218661.00
		Action Obligation:	$1218661.00

AWARD ID:	9700-0009	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9470DD0003
Office Name:	WASHINGTON HEADQUARTERS SERVICES	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$3082121.00

AWARD ID:	9700-0009	Doc Type:	DO
Mod Number:	3	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9470DD0003
Office Name:	WASHINGTON HEADQUARTERS SERVICES	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$193688.00

AWARD ID:	9700-0012	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA9470DD0003
Office Name:	WASHINGTON HEADQUARTERS SERVICES	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0.00
		Action Obligation:	$185413.00

AWARD ID:	3300-F0536CW10034	Doc Type:	DO
Mod Number:	1	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	3300-F0536CC10289
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$778058.70
		Action Obligation:	$778058.70

AWARD ID:	3300-F0536CW10039	Doc Type:	DO
Mod Number:	1	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	3300-F0536CC10258
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$180090.90
		Action Obligation:	$180090.90

AWARD ID:	3300-F06CW10412	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	3300-F0536CC10258
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$128433.00
		Action Obligation:	$128432.00

AWARD ID:	4740-GS09P99QXC0145	Doc Type:	DCA
Mod Number:	PO41	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	
Office Name:	GSA/PBS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$7410185.29
		Action Obligation:	$7410185.29

AWARD ID:	4740-GS01P04BWD0005	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS01P05BWD0005
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$492660.00
		Action Obligation:	$492660.00

21 Documents Found | 1 - 10 Of 21 | Next

AWARD Search Results

21 Documents Found | Previous | 11 - 20 Of 21 | Next

AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS01P06BWD0093
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$113288.00
		Action Obligation:	$113288.00
AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS01P06BWD0093
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$111930.00
		Action Obligation:	$111930.00
AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4730-GS06P07799
Office Name:	REAL ESTATE, DESIGN & CONSTRUCTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$818808.00
		Action Obligation:	$818808.00
AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4730-GS06P07799
Office Name:	OFFICE OF TENANT OPERATIONS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$144884.00
		Action Obligation:	$144884.00
AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4730-GS06P07799
Office Name:	OFFICE OF TENANT OPERATIONS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$370800.00
		Action Obligation:	$370800.00
AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$139320.00
		Action Obligation:	$139320.00
AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	12	Status:	Final
Agency Name:	INTERNAL REVENUE SERVICE	Referenced IDV ID:	4730-GS06F07799
Office Name:	DEPT OF TREAS/INTERNAL REVENUE SERVICE	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$308387.12
		Action Obligation:	$308387.12
AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F07799
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$187100.00
		Action Obligation:	$187100.00
AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F07799
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$184558.28
		Action Obligation:	$184558.28
AWARD ID:	[redacted]	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	VETERANS AFFAIRS, DEPARTMENT OF	Referenced IDV ID:	4730-GS06F07799
Office Name:	DEPT OF VETERANS AFFAIRS	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$187100.00
		Action Obligation:	$187100.00

21 Documents Found | Previous | 11 - 20 Of 21 | Next

AWARD Search Results

21 Documents Found Previous 21 - 21 Of 21

AWARD ID:	2700 W912CM05F0282	Doc Type:	DO
Mod Number:	P00006	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	4730 GS06P00796
Office Name:	Ft Shafter	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$0 00
		Action Obligation:	$134100 00

21 Documents Found Previous 21 - 21 Of 21

Exhibit E to Complaint—
Millar Elevator Contacts 2002 through 2006

AWARD Search Results

2 Documents Found

1 - 2 Of 2

AWARD ID:	4740 MA09920099CP0102MA0162095501P90BWFC0139	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740 GS01P90BWFC0139
Office Name:	GSA/PUBLIC BUILDINGS SERVICE	NAICS Code:	561790
Vendor Name:	MILLAR ELEVATOR INDUSTRIES, IN	Base And All Options Value:	$0.00
		Action Obligation:	$31000.00

AWARD ID:	4740 [illegible]	Doc Type:	DO
Mod Number:	P001	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740 GS09P98KSD0042
Office Name:	SAN DIEGO PROPERTY MANAGEMENT OFFICE	NAICS Code:	238960
Vendor Name:	MILLAR ELEVATOR SERVICE CO	Base And All Options Value:	$0.00
		Action Obligation:	$171182.00

2 Documents Found

1 - 2 Of 2

Exhibit F to Complaint—
Schindler Elevator Contracts 2007

AWARD Search Results

7 Documents Found 1 - 7 Of 7

AWARD ID:	9700-0008	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA947999D0065
Office Name:	WASHINGTON HEADQUARTERS SERVICES	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$2327676.00
		Action Obligation:	$2327676.00

AWARD ID:	9700-0013	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	DEPT OF DEFENSE	Referenced IDV ID:	9700-MDA947999D0063
Office Name:	WASHINGTON HEADQUARTERS SERVICES	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$2783221.00
		Action Obligation:	$2783221.00

AWARD ID:	3300-F07CW10126	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	SMITHSONIAN INSTITUTION	Referenced IDV ID:	3300-F06SCC10259
Office Name:	SMITHSONIAN INSTITUTION	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$234396.84
		Action Obligation:	$234396.84

AWARD ID:	4740-GS09P07KS0009	Doc Type:	DO
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	4740-GS09P98KSD0042
Office Name:	OFFICE OF PROPERTY MANAGEMENT	NAICS Code:	
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$203760.00
		Action Obligation:	$203760.00

AWARD ID:	4740-GS09P07KTC0028	Doc Type:	DCA
Mod Number:	0	Status:	Final
Agency Name:	PUBLIC BUILDINGS SERVICE	Referenced IDV ID:	-
Office Name:	PROPERTY DEVELOPMENT DIVISION	NAICS Code:	811219
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$240866.00
		Action Obligation:	$240866.00

AWARD ID:	3100-NRC1004396	Doc Type:	DCA
Mod Number:	M005	Status:	Final
Agency Name:	NUCLEAR REGULATORY COMMISSION	Referenced IDV ID:	-
Office Name:	NUCLEAR REGULATORY COMMISSION	NAICS Code:	561210
Vendor Name:	SCHINDLER ELEVATOR CORPORATION (0056)	Base And All Options Value:	$-394858.00
		Action Obligation:	$218098.00

AWARD ID:	2050-TIRNO04P00001	Doc Type:	DO
Mod Number:	21	Status:	Final
Agency Name:	INTERNAL REVENUE SERVICE	Referenced IDV ID:	4730-GS06F0079M
Office Name:	DEPT OF TREASANTERNAL REVENUE SERVICE	NAICS Code:	811310
Vendor Name:	SCHINDLER ELEVATOR CORPORATION	Base And All Options Value:	$210248.00
		Action Obligation:	$210248.00

7 Documents Found 1 - 7 Of 7

Exhibit B to Reiss Declaration—
Notification of Results of Investigation, dated
February 7, 2005

U.S Department of Labor

Office of Federal Contract
Compliance Programs
200 Sheffield Street, Room 102
Mountainside, New Jersey 07092-2314

Reply to the Attention of: IIEFTR

Daniel Kirk
1 Shawn Court
Middletown, NJ 07748

COMPLAINANT

Schindler Elevator Corporation
20 Whippany Road
Morristown, MJ 07960

CONTRACTOR

OFCCP Complaint No.: 100119824

NOTIFICATION OF RESULTS OF INVESTIGATION

On June 29, 2004, the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, commenced an investigation of the allegations of discrimination based on veteran's status made in the complaint of Daniel Kirk filed on April 27, 2004. Our investigation has resulted in the following findings:

1. The Schindler Elevator Corporation North America (hereinafter Schindler) is a nonexempt government contractor subject to the requirements of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended 38 U.S.C. 4212.

2. Daniel Kirk (hereinafter complainant) is a covered veteran of the Vietnam Era within the meaning of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 and the regulations at 41 CFR Part 60-250.

3. The complainant alleges that the contractor violated its obligations under the nondiscrimination and affirmative action provisions of its Federal contract by:

   A. Demotion:

      a1. Demoting him because of his status as Vietnam Era Veteran, specifically, the complainant alleges that on or about June 16, 2003, he was demoted from Regional Modernization Manager New York/Long Island to a Field Superintendent

      a2. Reporting false cost overages to his Modernization department in May

2003, which Schindler used as the reason for his poor performance and subsequent demotion

a3. Leaking damaging information resulting in the spreading of rumors, that he was laid off, fired, or demoted, which ultimately influenced his earning potential during June and July 2003

a4. Informed by his supervisor on July 16, 2003, that his demotion and pay cut was "politics" and the rumors were coming from Human Resources

a5. Claiming not to be aware of the change to his job title in Schindler's internet telephone directory, although the decision to demote him had been made a month earlier

a6. Although never receiving poor performance ratings demoting him from Regional Modernization Manager New York/Long Island to Field Superintendent

a7. Promoting a non-Vietnam Era Veteran, to the position of Regional Modernization Manager New York/Long Island

a8. Schindler not offering an acceptable position after making the decision to demote him

a9. Demoting him once Schindler received approval from the National Labor Relations Board (NLRB) to merge employees from different unions

a10. Failing to release his Master Electrician license thus creating an obstacle in obtaining other employment

B. Termination:
Creating an intolerable working environment, this left him with no alternative except to resign

C. Pay:
Not providing severance nor vacation pay after he left Schindler

D. Veteran Issues:
Not having an Affirmative Action Program for covered veterans nor offering veterans the opportunity to self-identify their veteran status.

E. Retaliation:
Retaliating against him by breaching his right to confidentiality by presenting a motion in Federal Court to dismiss his case because he had filed a complaint with OFCCP

4. Schindler denied discriminating against the complainant based on his veteran status and asserted the complainant's decision was due to his own poor performance, and his decision to leave Schindler was his own voluntary choice. According to Schindler, the complainant's OFCCP complaint is merely the latest in a series of baseless accusations made by the complainant. Schindler stated that the complainant filed a lawsuit against Schindler in October 2003 concerning his demotion and his resignation from Schindler. The company stated that throughout the litigation, neither the complainant nor his lawyer has ever alleged that he was discriminated against because of his status as a veteran. Schindler stated that the complainant's filing of his complaint with OFCCP in April 2004 is the first time the complainant has ever raised the allegation of his status as a veteran.

By letter dated August 5, 2004, the complainant's counsel wrote the Regional Vice President for the New York Region and alleged that the complainant had been constructively discharged and sought severance pay. However, the complainant's Counsel never alleged that the complainant had been subject to any type of anti-veteran animus by Schindler. Schindler's, Associate General Counsel, replied and denied the complainant's' allegations that he was constructively discharged or entitled to severance pay under Schindler's severance pay plan. Since the complainant resigned to take another job, he did not qualify for severance under Schindler's severance pay plan, which provides benefits only for employees who are laid off.

The Complainant admits in the OFCCP complaint that, after the merger he never identified himself to anyone at Schindler that he was a Vietnam veteran. Specifically, he never self-identified to the Manager, Human Resources Labor Relations. He is a Vietnam veteran who served in the Marines for over thirty years in active duty and the reserves and retired as a Colonel. The complainant also never self-identified himself as a Vietnam veteran to his two superiors, the Regional Vice President for the New York Region and the District Manager New installation and Modernization New York. The District Manager New installation and Modernization New York also is a Vietnam veteran who served in the Marines from 1964 to 1967.

Finally, Schindler has an affirmative action program for Vietnam Era Veterans in full compliance with the requirements of VEVRAA.

5. Our investigation indicates that the complainant began his employment with Millar Elevator Industries, Inc. on August 21, 1978 as a Journeyman Elevator Mechanic, a local 3 union position in the Maintenance Department. On May 1, 1985, he was promoted to Field Supervisor in the Maintenance Department. In 1990, he was promoted to Manager, Maintenance Support and Repair (MR). From 1991 to 2000, he continued to receive salary increases and merit increases based on positive performance evaluations. He had oversight responsibility for 44 employees of which two were direct reports. The complainant had management responsibility for the maintenance, repair, and upgrades of elevators and escalators. On November 16, 2001, the complainant was promoted to Vice President of Maintenance (MR)/Repair Departments. He was offered and accepted the additional responsibility of managing the Modernization department. As Vice President of Maintenance (MR)/Repair Departments, he managed approximately 132 employees.

In early 2002, there was a nation-wide merger of Millar Elevator Industries, inc. with Schindler Elevator Corporation North America. The Regional Vice President for the New York Region notified the complainant that his job title changed from Vice President Maintenance (MR)/Repair Department to Regional Modernization Manager New York/Long Island. The complainant continued to work in this position until he left Schindler's employment on or about August 12, 2003.

Regarding the complainant's first (a1) allegation that he was demoted because of his status as a Vietnam Era Veteran veteran, the investigation revealed that complainant was not demoted because of his status as a Vietnam Era Veteran. Specifically, the Regional Vice President for the New York Region and the complainant's direct report, the District Manager New installation and Modernization New York, who decided to demote the complainant are both Vietnam Era veterans. In addition, the Manager Human Resources Labor Relations, who is a Vietnam Era veteran, concurred with the decision. Finally, although the complainant was going to be reassigned to the Field Superintendent position, which is one reporting level below his current position, the complainant decided to leave Schindler's employment. He left before it was determined that this reassignment would also have resulted in a pay reduction.

OFCCP determined through its investigation that it could not support the complainant's allegation that Schindler demoted him because of his status as a Vietnam Era Veteran.

Regarding the complainant's second (a2) allegation, reporting false cost overages to his Modernization department in May 2003, which Schindler used as the reason for his poor performance and subsequent demotion

Our investigation revealed the complainant was not solely responsible for the monetary losses incurred in the Modernization department in May 2003. An internal audit was conducted in June 2003 of the New York office that included the Modernization department. There were an array of problem areas identified to include project surveys and estimating, and project management, which resulted in Schindler instituting employee and procedural changes.

In relation to the complainant's job performance with Schindler, the complainant received an $8,000.00 bonus in 2002 with no change in his salary. On February 2, 2003, the complainant signed an "Employee Appraisal and Development plan" covering the period January 1, 2003 to December 31, 2003. The employee development plan only indicated that he needed to "improve communication skills with subordinates and peers" It included a training class called "Successfully managing people" for the complainant to take on April 25, 2003. A section named "Objectives and Action Plan-year 2003" was also reviewed with the complainant. This section outlined the objectives, actions, measuring tools and the targets to be accomplished as the Regional Modernization Manager New York/Long Island. The complainant confirmed his demotion with his supervisor on July 15, 2003. He subsequently requested a three-week vacation on July 16, 2003. He contacted a Schindler competitor for employment consideration on July 17, 2003 and was hired on August 21, 2003. On or about July 22, 2003, his manager

completed a "Management Resource Planning" document. This document has the complainant's job title changed to Field Superintendent with development for the complainant to "to work in Service and Repair as that was his forte". On July 23, 2003, the complainant received a $700.00 bonus. He had also accumulated $2,100.00 in bonus monies as of July 23, 2003. The complainant's employment ended on August 12, with Schindler resulting in a salary loss of $159,749.00.

The OFCCP determined through its investigation that it could not support the complainant's allegation that Schindler used the May 2003 Modernization department's significant cost overages, as the reason for his poor performance and subsequent demotion because he is a Vietnam Era Veteran.

Regarding the complainant's third (a3) allegation wherein he alleges that during June and July 2003, leaks of damaging information resulting in the spreading of rumors, that he was laid off, fired, or demoted, ultimately influenced his earning potential

Our investigation revealed that employees had heard rumors that an adverse employment decision had been made against the complainant. Because of these rumors on or about June 17, 2004, the complainant heard about and verified that his job title had been changed in Schindler's intranet telephone directory from Regional Modernization Manger (RMM) to Field Superintendent (FS). The complainant's demotion was disseminated prior to his notification. The Manager Human Resource Labor Relations updated organizational charts, which he believed, were only being prepared for the parent company in Switzerland. However, these organizational charts were also used to update the Schindler's intranet telephone Directory.

The complainant confirmed with his Supervisor and the Manager Human Resource Labor Relations that he was not going to be terminated. He confirmed the job title change, which was a decrease in job responsibilities. The complainant made the decision to seek other employment. A Schindler competitor at a lower starting salary hired him.

The OFCCP determined through its investigation that it could not support the complainant's assertion that the premature release of information about his demotion, which resulted in the rumors were intentionally used to discredit him and affect his future earning potential, because he is a Vietnam Era veteran.

Regarding the complainant's forth (a4) allegation, being told by his supervisor on July 16, 2003, that his demotion and pay cut was "politics" and the rumors were coming from the Human Resources

The OFCCP determined through its investigation, it could not confirm that the complainant was told the demotion and pay cut were "politics" and that the rumors were coming from the Human Resources Department. Further, this statement in and of itself cannot substantiate a finding of discrimination due to veteran status.

Regarding the complainant's fifth (a5) allegation, claiming not to be aware of the change to his job title in Schindler's internet telephone directory, although the decision to demote him was made a month earlier.

Our investigation revealed the complainant spoke with the Manger Human Resources Labor Relations and that the decision was made to demote him approximately a month earlier by the Regional Vice President and the complainant's first line supervisor. The three managers asserted that the decision was not immediately discussed with complainant because it was decided to wait until the complainant's immediate supervisor returned from his vacation. Further, these employees expressed apologies to the complainant about the premature release of his job title change in Schindler's intranet telephone directory.

The OFCCP determined through its investigation, although there was a delay in telling the complainant about his demotion, and there was a premature release of his demotion information, which was unfortunate, it could not support the complainant's assertion that this occurred because he is a Vietnam Era veteran.

Regarding the complainant's sixth (a6) allegation, although never receiving poor performance ratings, demoting the complainant from Regional Modernization Manager New York/Long Island to Field Superintendent.

The investigation revealed that during the complainant's employment, he received regular salary increases and promotions. The investigation further revealed that Regional Modernization Manager New York/Long Island job was difficult and not a desired position. It also revealed the complainant had been promoted to the position of Vice President Maintenance (MR)/Repair Departments in November 2001, a couple of months before the integration of both companies, which began in January 2002. In approximately February 2002, the decision was made for the complainant to assume the title of Regional Moderation Manager New York/Long Island. In fact, the complainant asserted that he was promoted. It was discovered that other Mangers were demoted during the integration, but with no loss in compensation. The complainant continued to manage the former Millar modernization projects and he assumed some but not all of the Schindler modernization projects. However, at least three projects were not solely the complainant's responsibility. All three had labor cost overages, which were charged to the complainant's modernization department.

The contractor provided a performance evaluation with objectives for 2002. However, it was not signed nor dated by the complainant. The complainant asserts that he did see nor sign the document. Therefore, it is inconclusive as to whether the document is genuine. In January of 2003, the complainant was given a performance evaluation with goals and objectives by his supervisor; however, the only problem identified was that he needed to improve his communication skills. In addition, after the complainant left the contractor's employ he received a $700 dollar bonus check from the Vice President Modernization.

Due to the integration, the complainant was required to use the contractor's operating

procedures. He stated that he had no difficulty in this area. However, the investigation revealed that the complainant did have difficulty in his job. In fact, when the complainant discussed his demotion with his supervisor, he requested to be considered for a position managing the Service (with sales commissions) or Repair departments.

The OFCCP determined through its investigation that it could not reach a definitive conclusion as to the job performance of the complainant in 2002 and 2003; however, this is irrelevant because there is no evidence to support that his status as a veteran was considered.

Regarding the complainant's seventh (a7) allegation, promoting a non-Vietnam Era veteran, to the position of Regional Modernization Manager New York/Long Island.

Our investigation revealed that in mid July 2003, after the decision was made to reassign the complainant; the Manager Human Resources Labor Relations began a recruitment process; an internal candidate was offered the Regional Modernization Manager New York/Long Island position on January 29, 2004. In July 2004, an external candidate applied and accepted the position.

The OFCCP determined through its investigation, there is no evidence to suggest that the contractor promoted an employee, because he was a non-veteran. Further, the selecting officials were Vietnam Era veterans.

Regarding the complainant's eighth (a8) allegation, Schindler not offering an acceptable position after making the decision to demote him

Our investigation revealed that after the complainant learned of the pending reassignment, he had a discussion with his supervisor in which he declined the Field Superintendent position. He declined the offered position because he had held the job 15 years prior thus it was a reduction in job responsibilities. It was not determined whether the complainant would have lost his salary had he remained at Schindler.

The OFCCP determined through its investigation, there is no evidence to support that the failure to offer a job, acceptable to complainant was because he is a Vietnam Era veteran. Further, the decision makers including the Human Resource Manger Labor Relation are all Vietnam Era veterans.

Regarding the complainant's ninth (a9) allegation, demoting him once Schindler received approval from the National Labor Relations Board (NLRB) to merge its employees from different unions

The investigation revealed that because of the integration of the two companies the contractor had union employees in different locals. As part of the integration process, these employees had to be merged, thus the involvement of the National Labor Relations Board (NLRB). The NLRB approved the joining of the employees into one union.

OFCCP does not have jurisdiction over the NLRB, thus this issue was not be perused.

Regarding the complainant's tenth (a10) allegation, failing to release his Master Electrician license thus creating an obstacle in obtaining other employment

The investigation revealed that the complainant had obtained a Master Electrical license in 1995. As part of his job duties; he would take responsibility for the electrical work on projects. An application was filed for a project, which remained open until the electrical work was inspected for violations. If violations were found, these remained on the Master electrician's license until the violations were corrected. When the complainant left Schindler's employment, open applications and violations for projects were still attached to his license. The investigation showed that another former Schindler employee also had violations on his license when he terminated his employment. He is not a veteran. Further, a Schindler competitor hired the complainant on August 21, 2003.

The OFCCP determined through its investigation, although the complainant left Schindler, it appears that his license would not have been cleared until the violations were corrected by Schindler. Further, there is no evidence to suggest that the complainant's license had not been cleared because he is a veteran.

B. Termination:
On the issue of termination, Schindler created an intolerable working environment, this left him with no alternative except to resign

Our investigation revealed that the complainant was going to be reassigned from the Regional Modernization Manger New York/Long Island position. The complainant was not informed of the pending personnel action before it became public knowledge via the Schindler's intranet telephone directory. Rumors were circulating about the complainant being laid off, demoted, or fired. However, both of the complainant's supervisors told him that they wanted him to remain with Schindler. The complainant was given an unscheduled three-week vacation in consideration of the pending demotion. Therefore, no evidence was uncovered to support the complainant's allegation that he was terminated because he is a Vietnam Era Veteran. The decision makers were both veterans.

The OFCCP determined through its investigation, that it could not support the complainant's allegation of being terminated because he is a Vietnam Era veteran

C. Pay:
On the issue of pay, Schindler did not provide him severance or vacation pay after he left Schindler

Our investigation revealed that the complainant was not entitled to severance pay because he terminated his employment with Schindler. The investigation showed that the complainant received his vacation pay.

The OFCCP determined through its investigation, that there is no merit to the complainant's allegation.

D. Veteran Issues:
On the veteran issues, Schindler did not have an Affirmative Action Program for covered veterans or offering veterans the opportunity to self-identify their veteran status

Our investigation revealed that Schindler does have an affirmative action program for covered veterans, which include an invitation for veterans to s identify their veteran status. In addition, it completes an annual Vet-100 report to identify veteran employees. Finally, Schindler has practices and procedures, which demonstrated its affirmative action efforts towards covered veterans.

The OFCCP determined through its investigation that the allegation is without merit.

E. Retaliation:
On the issue of retaliation, Schindler retaliated against him by breaching his right to confidentiality by presenting a motion in Federal Court to dismiss his case because he had filed a complaint with OFCCP.

OFCCP investigates employment discrimination per the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, in that the complainant is not an employee of Schindler, OFCCP cannot address this allegation.

6. Based on the findings of this investigation, there was insufficient evidence to suggest that the contractor has violated its obligations under the non-discrimination and affirmative action provisions of 38 U.S.C. 4212. Therefore, the Departments processing of this complaint is concluded.

As set for the in 41 CFR 60-250.26(g), the Deputy Assistance Secretary for Federal Contract Compliance may, for reasonable cause, reconsider or order the reconsideration of this determination. This authority has been delegated to the Regional Director. Therefore, a request for reconsideration based on reasonable cause should be addressed, within 30 days of receipt of this notification, to Harold M. Busch, Acting Regional Director for OFCCP, Northeast Region, U.S. Department of Labor-ESA, 201 Varick Street, Room 750, New York, NY 10014-4811.

Such a request should be accomplished by affidavits, signed testimony of supervisory or co-workers, or other written documentation which would substantially alter our findings in this case.

On behalf of the United States Department of Labor

02/01/2005

MICHELLE HODGE
Date
District Director
Mountainside District Office
OFCCP-Northeast Region

Exhibit A to Kirk Affidavit—
Complaint of Discrimination in Employment
Under Federal Government Contracts

Complaint of Discrimination In Employment Under Federal Government Contracts

U.S. Department of Labor

Employment Standards Administration
Office of Federal Contract Compliance Programs

Instructions: Before completing this form, please read all instructions, including the Privacy Act statement below. Use this Form to file a complaint of discrimination in employment under any of the OFCCP programs. Note: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OMB No. 1215-0131
Expires 11-30-09

Privacy Act Notice

The authority for collecting this information is Executive Order 11246, as amended; Sec. 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212; Title VII of the Civil Rights Act of 1964, as amended; and the Title I of the Americans with Disabilities Act of 1990, as amended (ADA). This information is used to process complaints and conduct investigations of alleged violations of the above Order or Acts. We will provide a copy of this complaint to the employer against whom it is filed and, when matters alleged are covered by Title VII and/or the ADA, to the U.S. Equal Employment Opportunity Commission (EEOC). The information collected may be verified with others who may have knowledge relevant to the complaint. It may be used in settlement negotiations with the employer or in the course of presenting evidence at a hearing, or may be disclosed to other agencies with jurisdiction over the complaint. Providing this information is voluntary, however, failure to provide the information will restrict the action that the Department of Labor can take on your behalf and, for matters covered by Title VII or the ADA, may affect your right to sue under those laws.

Non-Retaliation: OFCCP regulations, and Title VII and/or the ADA where applicable, require an employer to take all necessary steps to assure that there is no retaliation against any person who files a complaint or assists in its investigation. This includes any intimidation, threat, coercion or discrimination. Please notify OFCCP immediately if any alleged attempt at retaliation is made.

Prompt Filing: All complaints must be filed within a specified number of days following the latest occurrence of the alleged discrimination: Executive Order 11246 - 180 days; Rehabilitation and Veterans Acts - 300 days. Exceptions must be approved by the Deputy Assistant Secretary.

Name and address: [x] Mr. [ ] Ms. [ ] Mrs. [ ] Miss

Name: Garfall Kirk

Line #1: 1 Queen Court City: Middletown

Line #2: State: NJ Zip: 07748

Telephone No.: (732)671 7041

Mail this form to: Dept. of Labor OFCCP Regional Office

New Jersey (Northeast Region)

Name and address of company you allege discriminated against you:

Name: Schindler Elevator

Line #1: 20 Whippany Road City: Morristown

Line #2: State: NJ Zip: 07960

Telephone No.: (973)397 3700

Give date(s) of the latest occurrence(s) of the alleged discriminatory act(s):

07/06/2003

Step 1 Check the box next to the program you are filing under (i.e. Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.)

Step 2 Under the program, check what you believe to be the basis for the discrimination against you, such as race, sex or national origin. If you think that there was more than one basis, more than one basis may be checked. You may also check more than one race/ethnic category.

[ ] **Executive Order 11246, as amended.** This Order covers persons alleging discrimination because of race, color, religion, sex or national origin. If this is checked, your complaint will be dual filed as a charge under Title VII of the Civil Rights Act of 1964. I believe I was (or continue to be) discriminated against because of my

Basis:
- [ ] Race
- [ ] Color
- [ ] Religion
- [ ] Sex ([ ] Female [ ] Male)
- [ ] National Origin
- [ ] Other

- [ ] Hispanic or Latino
- [ ] Not Hispanic or Latino

- [ ] American Indian or Alaska Native
- [ ] Asian
- [ ] Black or African American
- [ ] Native Hawaiian or Other Pacific Islander
- [ ] White

[ ] **Section 503 of the Rehabilitation Act of 1973, as amended.** This Act covers individuals with a disability, persons with a history of physical or mental disability, and persons regarded as disabled by the employer. If this is checked, your complaint will be dual filed as a charge under the Americans with Disabilities Act.

Basis: [ ] Disability. Please check if you are a veteran: [ ] Yes [ ] No

[x] **Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.** This Act covers special disabled veterans, veterans of the Vietnam Era, and other protected veterans.

Basis: [ ] Special Disabled Veteran / Veteran of the Vietnam Era [ ] Other protected veteran (Specify one):

EXHIBIT
P1

8. YOUR COMPLAINT IS BASED ON VETERAN STATUS. CHECK THE FOLLOWING, IF APPLICABLE (IF ANY):

[ ] I am entitled to disability compensation under laws administered by the Department of Veterans Affairs for a disability rated at 30% or more, or rated at 10 or 20% and have been officially determined to have a serious employment disability. If you have checked this box, submit documentation from the Department of Veterans Affairs with this form.

[ ] I was discharged or released from active duty for a service-connected disability. If you have checked this box, submit documentation from the Department of Veterans Affairs with this form.

[x] I served on active duty for a period of more than 180 days, and was discharged or released with other than a dishonorable discharge, and the active duty occurred in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or between August 5, 1964, and May 7, 1975 in all other cases.

[ ] I served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

Step 3. Check those actions which you believe the employer took or failed to take because of your race, color, religion, sex, national origin, disability or veteran status (more than one may be checked).

Issue(s):

[ ] Hiring	[ ] Promotion	[ ] Job Assignment	[ ] Accommodation to Disability
[x] Termination	[x] Demotion	[ ] Training and Apprenticeship	[ ] Sabbath Day Observance
[ ] Layoff	[ ] Seniority	[ ] Segregated Facilities	[ ] Intimidation
[ ] Recall	[ ] Harassment	[ ] Retaliation	[ ] Other: _____
[ ] Wages	[ ] Job Benefits	[ ] Pregnancy Leave Policy	

FOR EACH ISSUE, EXPLAIN IN YOUR STATEMENT BELOW HOW YOU WERE DISCRIMINATED AGAINST.

1. Do you know any other employees or applicants of your group who were treated in the same way (checked above) you allege you were?

[ ] Yes [x] No If yes, include their names in your statement below and explain how they were treated.

2. Do you know any other employees or applicants who are NOT of your group who were treated in the same way (checked above) you allege you were?

[x] Yes [ ] No If yes, include their names in your statement below and explain how they were treated.

THE COMPLAINT

Describe in detail the alleged discriminatory act(s).

PLEASE INCLUDE:

- Why you believe the act(s) was because of your disability, veteran status, race, color, religion, sex or national origin.
- Dates, places, names and titles of persons involved and witnesses, if any.
- What harm, if any, was caused to you or others with whom you work as a result of the alleged discriminatory act(s).
- What explanation, if any, was offered for the act(s) by the employer.
- Any information you may have on federal contracts held by the employer.

If this is a complaint based on disability, describe the disability, your history of disability, or why you think the employer regarded you as disabled.

I began working for Miller Elevator in 1978. Miller was integrated into parent company Schindler Elevator Corporation in 2002. During that 24 year period I worked hard and built a well deserved reputation in the industry as a highly effective manager. I never received a poor performance review.

Despite my excellent record, beginning about June of 2003, Schindler began spreading rumors within the company and industry that I was being "fired." On July 15, 2003, the Schindler Company Phone Directory was changed to list my position as "Field Supervisor" a much lower position than my position of Regional Modernization Manager. I called the Human Resource Dept and was told that the decision to demote me was made a month earlier, yet incredibly, nobody at Schindler had bothered to tell me. I was shocked and humiliated. I approached my boss, Charles Gutowski, and he said the demotion and pay cut was "politics," and he was aware of the problem of bullies in the Human Resource Department.

I refused the demoted position because they wanted me to directly assist my replacement in the Modernization Department and I had not held a field position for nearly 15 years. They replaced me with a non-vet named John Quinn. He is not a Vietnam Veteran as I am. They would not offer me an acceptable position, so I consulted an attorney, Joseph M. Hajjar, and requested severance pay from Schindler. They refused my claim that I was constructively discharged and suffered defamation of character because of their poor management practices. They forced me to file suit in Federal Court.

1) Schindler is a Federal contractor and has contracts on elevator modernization projects such as the U.S. Post Office in New York City.

2) I do not believe they have an affirmative action in place for Veterans. I have never seen their affirmative action plan nor do they have one posted.

3) There was never an invitation to self-identify as a veteran within Schindler, although previous management at Mills knew I was a Vietnam Veteran.

4) When contracting out and when purchasing, Schindler fails to include an affirmative action program for veterans as part of its contract. I believe Schindler is in willful violation of the Vietnam Era Veterans Readjustment Act, as amended 38 U.S.C. 4212 (VEVRA).

As for Schindler's record as a discriminator, Ms. Nancy Mudd, employed by Schindler, filed a complaint of sex discrimination and retaliation with the EEOC on 02/23/2000.

On 09/27/2002 the EEOC issued its determination finding that there was reasonable cause to believe M. Mudd was discriminated against because of her gender and was retaliated against for asserting her discrimination claim.

A lawsuit alleging sex discrimination and retaliation has been filed in the Southern District of New York and is currently pending.

(Type as much information as required into the fields above)

If you have sought assistance in resolving the complaint from another source (another agency, a lawyer, a union representative, etc.) please indicate here and the name of the source, the date you sought assistance, and the result, if any.

Name: Joseph M. Hoppt Date: 01/25/2004

Result:

Joseph M. Hoppt, Attorney at Law
521 Fifth Ave
New York, New York 10175

A lawsuit has been filed in Federal Court in which I charge Schindler with Constructive Discharge and Deformation of Character since my reputation has been damaged in the industry and my salary at Transit Elevator is considerably less than my old salary. Judge Stein has ordered mediation, but the first session seemed futile. Schindler refuses to take responsibility for their actions. Furthermore, they refuse to clear their violations from my NY City Master Electricians License so I can transfer it to my new employer. They are essentially holding my Electrician's License hostage (August 2003 to Present)

Schindler has provided no explanation for their actions. As my legal costs are mounting, I feel they are now trying to drain me financially. I firmly believe Schindler Elevator is a discriminator and I was discriminated against as a Vietnam Veteran.

FRIEND OR RELATIVE

(Please notify OFCCP if you change your address or phone number. You may indicate here a person who would know how to reach you if OFCCP is unable to reach you at your own address or phone.)

Name: Linda Kirk
Line 1: 1 Sharon Court City: Middletown
Line 2: State: NJ Zip: 07748
Relationship: Wife
Telephone: (732)671-7087

HAS ED ELSEWHERE?

If you have filed this complaint or a similar one elsewhere, please tell us.

Name:
Line 1: City:
Line 2: State: Zip:
Contact:
Phone:

ARE YOU BE PRESENTED?

If you are represented by an attorney or other person or organization, please tell us.

Name: Joseph M. Hoppt
Line 1: 521 Fifth Ave City: New York
Line 2: State: NY Zip: 10175
Contact:
Phone: (212)973-0830

SIGNATURE AND VERIFICATION

I declare under penalty of perjury that the information given above is true and correct to the best of my knowledge or belief. (A willful false statement is punishable by law, 18 U.S.C. 1001.) I hereby authorize the release of any medical information needed for this investigation.

Signature of Complainant

4/15/04
Date

Public Burden Statement

We estimate that it will take an average of 1.28 hours to complete this complaint form, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. If you have any comments regarding these estimates or any other aspect of this complaint form, including suggestions for reducing this burden, send them to the Office of Federal Contract Compliance Programs, Policy Division (1215-0131), 200 Constitution Avenue, N.W., Room C-3310, Washington, D.C. 20210.

DO NOT SEND THE COMPLETED FORM TO THIS OFFICE.

Do not write below this line.

The complainant has verified this complaint in my presence. This complaint is ordered for the basis of an investigation under Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.

Name of Investigator Title Signature of Investigator Date

Exhibit B to Kirk Affirmation—
Letter from Michele Hodge to Daniel Kirk, dated February 7, 2005

U.S Department of Labor

Office of Federal Contract
Compliance Programs
200 Sheffield Street, Room 102
Mountainside, New Jersey 07092-2314

Reply to the Attention of: IIEFTR

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7002 2030 0003 7844 0608

February 7, 2005

Mr. Daniel Kirk
1 Shawn Court
Middletown, NJ 07748

Re: Daniel Kirk
v. Schindler Elevator Corporation
OFCCP Complaint No. 100119824

Dear Mr. Kirk:

This letter is to inform you that a Notification of Results of Investigation, enclosed herewith, has been made with regard to the complaint that you filed with this office alleging that Schindler Elevator Corporation, violated its obligation under the provisions of the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended (38 USC 4212 or VEVRAA).

Should you take exception to the findings, you may file a request for review within thirty (30) days. Direct such a request, with appropriate substantiating documentation to:

Harold Busch, Acting Regional Director
Office of Federal Contract Compliance Programs
Northeast Region
United States Department of Labor
201 Varick Street
New York, New York 10014-4811

If you have any questions regarding this letter or its attachments, please feel free to contact Compliance Officer Cheryl King at (908) 317-6969.

Sincerely,

MICHELE HODGE
District Director

Enclosure: as stated

U.S Department of Labor

Office of Federal Contract
Compliance Programs
200 Sheffield Street, Room 102
Mountainside, New Jersey 07092-2314

Reply to the Attention of: HEFTR

Daniel Kirk
1 Shawn Court
Middletown, NJ 07748

COMPLAINANT

Schindler Elevator Corporation
20 Whippany Road
Morristown, NJ 07960

CONTRACTOR

OFCCP Complaint No.: I00119824

NOTIFICATION OF RESULTS OF INVESTIGATION

On June 29, 2004, the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, commenced an investigation of the allegations of discrimination based on veteran's status made in the complaint of Daniel Kirk filed on April 27, 2004. Our investigation has resulted in the following findings:

1. The Schindler Elevator Corporation North America (hereinafter Schindler) is a nonexempt government contractor subject to the requirements of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended 38 U.S.C. 4212.

2. Daniel Kirk (hereinafter complainant) is a covered veteran of the Vietnam Era within the meaning of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 and the regulations at 41 CFR Part 60-250.

3. The complainant alleges that the contractor violated its obligations under the nondiscrimination and affirmative action provisions of its Federal contract by:

   A. Demotion:

      a1. Demoting him because of his status as Vietnam Era Veteran, specifically, the complainant alleges that on or about June 16, 2003, he was demoted from Regional Modernization Manager New York/Long Island to a Field Superintendent

      a2. Reporting false cost overages to his Modernization department in May

2003, which Schindler used as the reason for his poor performance and subsequent demotion

a3. Leaking damaging information resulting in the spreading of rumors, that he was laid off, fired, or demoted, which ultimately influenced his earning potential during June and July 2003

a4. Informed by his supervisor on July 16, 2003, that his demotion and pay cut was "politics" and the rumors were coming from Human Resources

a5. Claiming not to be aware of the change to his job title in Schindler's internet telephone directory, although the decision to demote him had been made a month earlier

a6. Although never receiving poor performance ratings demoting him from Regional Modernization Manager New York/Long Island to Field Superintendent

a7. Promoting a non-Vietnam Era Veteran, to the position of Regional Modernization Manager New York/Long Island

a8. Schindler not offering an acceptable position after making the decision to demote him

a9. Demoting him once Schindler received approval from the National Labor Relations Board (NLRB) to merge employees from different unions

a10. Failing to release his Master Electrician license thus creating an obstacle in obtaining other employment

B. Termination:
Creating an intolerable working environment, this left him with no alternative except to resign

C. Pay:
Not providing severance nor vacation pay after he left Schindler

D. Veteran Issues:
Not having an Affirmative Action Program for covered veterans nor offering veterans the opportunity to self identify their veteran status.

E. Retaliation:
Retaliating against him by breaching his right to confidentiality by presenting a motion in Federal Court to dismiss his case because he had filed a complaint with OFCCP

4. Schindler denied discriminating against the complainant based on his veteran status and asserted the complainant's decision was due to his own poor performance, and his decision to leave Schindler was his own voluntary choice. According to Schindler, the complainant's OFCCP complaint is merely the latest in a series of baseless accusations made by the complainant. Schindler stated that the complainant filed a lawsuit against Schindler in October 2003 concerning his demotion and his resignation from Schindler. The company stated that throughout the litigation, neither the complainant nor his lawyer has ever alleged that he was discriminated against because of his status as a veteran. Schindler stated that the complainant's filing of his complaint with OFCCP in April 2004 is the first time the complainant has ever raised the allegation of his status as a veteran.

By letter dated August 5, 2004, the complainant's counsel wrote the Regional Vice President for the New York Region and alleged that the complainant had been constructively discharged and sought severance pay. However, the complainant's Counsel never alleged that the complainant had been subject to any type of anti-veteran animus by Schindler. Schindler's, Associate General Counsel, replied and denied the complainant's' allegations that he was constructively discharged or entitled to severance pay under Schindler's severance pay plan. Since the complainant resigned to take another job, he did not qualify for severance under Schindler's severance pay plan, which provides benefits only for employees who are laid off.

The Complainant admits in the OFCCP complaint that, after the merger he never identified himself to anyone at Schindler that he was a Vietnam veteran. Specifically, he never self-identified to the Manager, Human Resources Labor Relations. He is a Vietnam veteran who served in the Marines for over thirty years in active duty and the reserves and retired as a Colonel. The complainant also never self-identified himself as a Vietnam veteran to his two superiors, the Regional Vice President for the New York Region and the District Manager New installation and Modernization New York. The District Manager New installation and Modernization New York also is a Vietnam veteran who served in the Marines from 1964 to 1967.

Finally, Schindler has an affirmative action program for Vietnam Era Veterans in full compliance with the requirements of VEVRAA.

5. Our investigation indicates that the complainant began his employment with Millar Elevator Industries, Inc. on August 21, 1978 as a Journeyman Elevator Mechanic, a local 3 union position in the Maintenance Department. On May 1, 1985, he was promoted to Field Supervisor in the Maintenance Department. In 1990, he was promoted to Manager, Maintenance Support and Repair (MR). From 1991 to 2000, he continued to receive salary increases and merit increases based on positive performance evaluations. He had oversight responsibility for 44 employees of which two were direct reports. The complainant had management responsibility for the maintenance, repair, and upgrades of elevators and escalators. On November 16, 2001, the complainant was promoted to Vice President of Maintenance (MR)/Repair Departments. He was offered and accepted the additional responsibility of managing the Modernization department. As Vice President of Maintenance (MR)/Repair Departments, he managed approximately 132 employees.

In early 2002, there was a nation-wide merger of Millar Elevator Industries, inc. with Schindler Elevator Corporation North America. The Regional Vice President for the New York Region notified the complainant that his job title changed from Vice President Maintenance (MR)/Repair Department to Regional Modernization Manager New York/Long Island. The complainant continued to work in this position until he left Schindler's employment on or about August 12, 2003.

Regarding the complainant's first (a1) allegation that he was demoted because of his status as a Vietnam Era Veteran veteran, the investigation revealed that complainant was not demoted because of his status as a Vietnam Era Veteran. Specifically, the Regional Vice President for the New York Region and the complainant's direct report, the District Manager New installation and Modernization New York, who decided to demote the complainant are both Vietnam Era veterans. In addition, the Manager Human Resources Labor Relations, who is a Vietnam Era veteran, concurred with the decision. Finally, although the complainant was going to be reassigned to the Field Superintendent position, which is one reporting level below his current position, the complainant decided to leave Schindler's employment. He left before it was determined that this reassignment would also have resulted in a pay reduction.

OFCCP determined through its investigation that it could not support the complainant's allegation that Schindler demoted him because of his status as a Vietnam Era Veteran.

Regarding the complainant's second (a2) allegation, reporting false cost overages to his Modernization department in May 2003, which Schindler used as the reason for his poor performance and subsequent demotion.

Our investigation revealed the complainant was not solely responsible for the monetary losses incurred in the Modernization department in May 2003. An internal audit was conducted in June 2003 of the New York office that included the Modernization department. There were an array of problem areas identified to include project surveys and estimating, and project management, which resulted in Schindler instituting employee and procedural changes.

In relation to the complainant's job performance with Schindler, the complainant received an $8,000.00 bonus in 2002 with no change in his salary. On February 2, 2003, the complainant signed an "Employee Appraisal and Development plan" covering the period January 1, 2003 to December 31, 2003. The employee development plan only indicated that he needed to "improve communication skills with subordinates and peers" It included a training class called "Successfully managing people" for the complainant to take on April 25, 2003. A section named "Objectives and Action Plan-year 2003" was also reviewed with the complainant. This section outlined the objectives, actions, measuring tools and the targets to be accomplished as the Regional Modernization Manager New York/Long Island. The complainant confirmed his demotion with his supervisor on July 15, 2003. He subsequently requested a three-week vacation on July 16, 2003. He contacted a Schindler competitor for employment consideration on July 17, 2003 and was hired on August 21, 2003. On or about July 22, 2003, his manager

completed a "Management Resource Planning" document. This document has the complainant's job title changed to Field Superintendent with development for the complainant to "to work in Service and Repair as that was his forte". On July 23, 2003, the complainant received a $700.00 bonus. He had also accumulated $2,100.00 in bonus monies as of July 23, 2003. The complainant's employment ended on August 12, with Schindler resulting in a salary loss of $159,749.00.

The OFCCP determined through its investigation that it could not support the complainant's allegation that Schindler used the May 2003 Modernization department's significant cost overages, as the reason for his poor performance and subsequent demotion because he is a Vietnam Era Veteran.

Regarding the complainant's third (a3) allegation wherein he alleges that during June and July 2003, leaks of damaging information resulting in the spreading of rumors, that he was laid off, fired, or demoted, ultimately influenced his earning potential.

Our investigation revealed that employees had heard rumors that an adverse employment decision had been made against the complainant. Because of these rumors on or about June 17, 2004, the complainant heard about and verified that his job title had been changed in Schindler's intranet telephone directory from Regional Modernization Manger (RMM) to Field Superintendent (FS). The complainant's demotion was disseminated prior to his notification. The Manager Human Resource Labor Relations updated organizational charts, which he believed, were only being prepared for the parent company in Switzerland. However, these organizational charts were also used to update the Schindler's intranet telephone Directory.

The complainant confirmed with his Supervisor and the Manager Human Resource Labor Relations that he was not going to be terminated. He confirmed the job title change, which was a decrease in job responsibilities. The complainant made the decision to seek other employment. A Schindler competitor at a lower starting salary hired him.

The OFCCP determined through its investigation that it could not support the complainant's assertion that the premature release of information about his demotion, which resulted in the rumors were intentionally used to discredit him and affect his future earning potential, because he is a Vietnam Era veteran.

Regarding the complainant's forth (a4) allegation, being told by his supervisor on July 16, 2003, that his demotion and pay cut was "politics" and the rumors were coming from the Human Resources.

The OFCCP determined through its investigation, it could not confirm that the complainant was told the demotion and pay cut were "politics" and that the rumors were coming from the Human Resources Department. Further, this statement in and of itself cannot substantiate a finding of discrimination due to veteran status.

Regarding the complainant's fifth (a5) allegation, claiming not to be aware of the change to his job title in Schindler's internet telephone directory, although the decision to demote him was made a month earlier.

Our investigation revealed the complainant spoke with the Manger Human Resources Labor Relations and that the decision was made to demote him approximately a month earlier by the Regional Vice President and the complainant's first line supervisor. The three managers asserted that the decision was not immediately discussed with complainant because it was decided to wait until the complainant's immediate supervisor returned from his vacation. Further, these employees expressed apologies to the complainant about the premature release of his job title change in Schindler's intranet telephone directory.

The OFCCP determined through its investigation, although there was a delay in telling the complainant about his demotion, and there was a premature release of his demotion information, which was unfortunate, it could not support the complainant's assertion that this occurred because he is a Vietnam Era veteran.

Regarding the complainant's sixth (a6) allegation, although never receiving poor performance ratings, demoting the complainant from Regional Modernization Manager New York/Long Island to Field Superintendent.

The investigation revealed that during the complainant's employment, he received regular salary increases and promotions. The investigation further revealed that Regional Modernization Manager New York/Long Island job was difficult and not a desired position. It also revealed the complainant had been promoted to the position of Vice President Maintenance (MR)/Repair Departments in November 2001, a couple of months before the integration of both companies, which began in January 2002. In approximately February 2002, the decision was made for the complainant to assume the title of Regional Moderation Manager New York/Long Island. In fact, the complainant asserted that he was promoted. It was discovered that other Mangers were demoted during the integration, but with no loss in compensation. The complainant continued to manage the former Millar modernization projects and he assumed some but not all of the Schindler modernization projects. However, at least three projects were not solely the complainant's responsibility. All three had labor cost overages, which were charged to the complainant's modernization department.

The contractor provided a performance evaluation with objectives for 2002. However, it was not signed nor dated by the complainant. The complainant asserts that he did see nor sign the document. Therefore, it is inconclusive as to whether the document is genuine. In January of 2003, the complainant was given a performance evaluation with goals and objectives by his supervisor; however, the only problem identified was that he needed to improve his communication skills. In addition, after the complainant left the contractor's employ he received a $700 dollar bonus check from the Vice President Modernization.

Due to the integration, the complainant was required to use the contractor's operating

procedures. He stated that he had no difficulty in this area. However, the investigation revealed that the complainant did have difficulty in his job. In fact, when the complainant discussed his demotion with his supervisor, he requested to be considered for a position managing the Service (with sales commissions) or Repair departments.

The OFCCP determined through its investigation that it could not reach a definitive conclusion as to the job performance of the complainant in 2002 and 2003; however, this is irrelevant because there is no evidence to support that his status as a veteran was considered.

Regarding the complainant's seventh (a7) allegation, promoting a non-Vietnam Era veteran, to the position of Regional Modernization Manager New York/Long Island.

Our investigation revealed that in mid July 2003, after the decision was made to reassign the complainant, the Manager Human Resources Labor Relations began a recruitment process; an internal candidate was offered the Regional Modernization Manager New York/Long Island position on January 29, 2004. In July 2004, an external candidate applied and accepted the position.

The OFCCP determined through its investigation, there is no evidence to suggest that the contractor promoted an employee, because he was a non-veteran. Further, the selecting officials were Vietnam Era veterans.

Regarding the complainant's eighth (a8) allegation, Schindler not offering an acceptable position after making the decision to demote him.

Our investigation revealed that after the complainant learned of the pending reassignment, he had a discussion with his supervisor in which he declined the Field Superintendent position. He declined the offered position because he had held the job 15 years prior thus it was a reduction in job responsibilities. It was not determined whether the complainant would have lost his salary had he remained at Schindler.

The OFCCP determined through its investigation, there is no evidence to support that the failure to offer a job, acceptable to complainant was because he is a Vietnam Era veteran. Further, the decision makers including the Human Resource Manger Labor Relation are all Vietnam Era veterans.

Regarding the complainant's ninth (a9) allegation, demoting him once Schindler received approval from the National Labor Relations Board (NLRB) to merge its employees from different unions.

The investigation revealed that because of the integration of the two companies the contractor had union employees in different locals. As part of the integration process, these employees had to be merged, thus the involvement of the National Labor Relations Board (NLRB). The NLRB approved the joining of the employees into one union.

OFCCP does not have jurisdiction over the NLRB, thus this issue was not be perused.

Regarding the complainant's tenth (a10) allegation, failing to release his Master Electrician license thus creating an obstacle in obtaining other employment

The investigation revealed that the complainant had obtained a Master Electrical license in 1995. As part of his job duties, he would take responsibility for the electrical work on projects. An application was filed for a project, which remained open until the electrical work was inspected for violations. If violations were found, these remained on the Master electrician's license until the violations were corrected. When the complainant left Schindler's employment, open applications and violations for projects were still attached to his license. The investigation showed that another former Schindler employee also had violations on his license when he terminated his employment. He is not a veteran. Further, a Schindler competitor hired the complainant on August 21, 2003.

The OFCCP determined through its investigation, although the complainant left Schindler, it appears that his license would not have been cleared until the violations were corrected by Schindler. Further, there is no evidence to suggest that the complainant's license had not been cleared because he is a veteran.

B. Termination:
On the issue of termination, Schindler created an intolerable working environment, this left him with no alternative except to resign

Our investigation revealed that the complainant was going to be reassigned from the Regional Modernization Manger New York/Long Island position. The complainant was not informed of the pending personnel action before it became public knowledge via the Schindler's intranet telephone directory. Rumors were circulating about the complainant being laid off, demoted, or fired. However, both of the complainant's supervisors told him that they wanted him to remain with Schindler. The complainant was given an unscheduled three week vacation in consideration of the pending demotion. Therefore, no evidence was uncovered to support the complainant's allegation that he was terminated because he is a Vietnam Era Veteran. The decision makers were both veterans.

The OFCCP determined through its investigation, that it could not support the complainant's allegation of being terminated because he is a Vietnam Era veteran.

C. Pay:
On the issue of pay, Schindler did not provide him severance or vacation pay after he left Schindler

Our investigation revealed that the complainant was not entitled to severance pay because he terminated his employment with Schindler. The investigation showed that the complainant received his vacation pay.

The OFCCP determined through its investigation, that there is no merit to the complainant's allegation.

D. Veteran Issues:
On the veteran issues, Schindler did not have an Affirmative Action Program for covered veterans or offering veterans the opportunity to self-identify their veteran status.

Our investigation revealed that Schindler does have an affirmative action program for covered veterans, which include an invitation for veterans to s identify their veteran status. In addition, it completes an annual Vet-100 report to identify veteran employees. Finally, Schindler has practices and procedures, which demonstrated its affirmative action efforts towards covered veterans.

The OFCCP determined through its investigation that the allegation is without merit.

E. Retaliation:
On the issue of retaliation, Schindler retaliated against him by breaching his right to confidentiality by presenting a motion in Federal Court to dismiss his case because he had filed a complaint with OFCCP.

OFCCP investigates employment discrimination per the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, in that the complainant is not an employee of Schindler, OFCCP cannot address this allegation.

6. Based on the findings of this investigation, there was insufficient evidence to suggest that the contractor has violated its obligations under the non-discrimination and affirmative action provisions of 38 U.S.C. 4212. Therefore, the Departments processing of this complaint is concluded.

As set for the in 41 CFR 60-250.26(g), the Deputy Assistance Secretary for Federal Contract Compliance may, for reasonable cause, reconsider or order the reconsideration of this determination. This authority has been delegated to the Regional Director. Therefore, a request for reconsideration based on reasonable cause should be addressed, within 30 days of receipt of this notification, to Harold M. Busch, Acting Regional Director for OFCCP, Northeast Region, U.S. Department of Labor-ESA, 201 Varick Street, Room 750, New York, NY 10014-4811.

Such a request should be accomplished by affidavits, signed testimony of supervisory or co-workers, or other written documentation which would substantially alter our findings in this case.

On behalf of the United States Department of Labor

02/07/2005

MICHELLE HODGE
District Director
Mountainside District Office
OFCCP-Northeast Region

Date

Exhibit C to Kirk Affirmation—
Letter from Daniel Kirk to Harold Mo Busch, dated March 7, 2005

Daniel Kirk
1 Shawn Court
Middletown, NJ 07748

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Harold M. Busch
Acting Regional Director for OFCCP, Northeast Region
United States Department of Labor-ESA
201 Varick Street - Room 750
New York, New York 10014-4811

March 7, 2005

Re: **Appeal Request**
Daniel Kirk v. Schindler Elevator Corporation
OFCCP Complaint No: 100119824 **Daniel Kirk: COMPLAINANT**

Dear Mr. Busch,

I am in receipt of the "Notification of Results of Investigation" by Ms. Michele Hodge District Director, Mountainside District Office, dated 02/07/2005 concerning my complaint #100119824. The investigation concludes there is "insufficient evidence" to suggest that Schindler Elevator violated its obligations under the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended 38 U.S.C. 4212 or discriminated against me as a veteran of Vietnam.

I strongly disagree with the findings and can conclusively demonstrate that Ms. Hodge and Ms. Cheryl King, Compliance Officer, were aware of Schindler's violations and filed a false and unlawful report in accordance with secret agreements with this large, wealthy corporation. Herewith, I provide indisputable evidence that Schindler Elevator Corporation did willfully violate its obligations under the nondiscrimination and affirmative action provisions of its federal contracts.

1) Schindler Elevator Corporation failed to file any annual VETS-100 reports as mandated by VEVRAA until my complaint of discrimination, CC-4 dated 04/15/2004 forced an on-site compliance review of their personnel practices by the OFCCP.

2) Schindler Elevator Corporation failed to take affirmative action to employ and advance covered veterans in employment and failed to invite its employees to self- identify as veterans until my complaint forced an OFCCP investigation.

3) I was unfairly demoted and constructively discharged from my position as Regional Modernization Manager by Schindler despite my veteran status because no one ever asked me to self-identify as a Vietnam veteran.

SUBSTANTIATING EVIDENCE
EXHIBITS A-F

Exhibit A – Letter dated 02/11/2005 and signed by Mr. Robert Wilson, Chief, Investigation and Compliance Division, Office of the Assistant Secretary for Veteran's Employment and Training, U.S. Department of Labor with documentation obtained under the Freedom of Information Act stating Schindler failed to file the required VETS-100 reports prior to the accompanying September 2004 submission. This is indisputable proof of the contractor's non-compliance.

Exhibit B – Form CC-4 signed by Daniel Kirk on 04/15/2004 reporting discriminatory acts by Schindler Elevator Corporation last occurring on 07/16/2003. According to the Office of the Assistant Secretary for Veteran's Employment and Training, Schindler did not submit a VETS-100 report for 2003 or 2002. This form together with Mr. Wilson's letter, Exhibit A proves that Schindler was in non-compliance under VEVRAA on the date the stated discriminatory act took place.

Exhibit C— Sworn declaration of former Schindler employee, and Vietnam veteran, Walter Cooper stating that he told Ms. King during the investigation that Schindler did not have an affirmative action program, did not offer employees an invitation to self- identify as veterans and that he himself was forced out of the company in June 2003.

Exhibit D —Schindler's employee manual (SEC. Policies and Procedures Manual) dated June 2002. As stated in Title 41 CFR § 60-741.44, an affirmative action program is required to be written and available to all employees in the federal contractor's policy manual. Because Schindler's comprehensive policy manual does not include an affirmative action plan or program for veterans as required by VEVRAA, no such affirmative action program for veterans existed.

> (d1) Since I was a manager with 25 years seniority at Schindler, part of my everyday departmental duties concerned hiring, firing, promoting, demoting and reassigning employees. I certainly would have known of and have been given documentation outlining veteran affirmative action programs if they existed.
>
> (d2) Schindler did not have an affirmative action program during my 25 years with the company, nor did it offer employees a chance to self-identify as veterans in accordance with VEVRAA during that period. I was never instructed by my superiors to recruit or advance in employment covered veterans or make special accommodations for disabled veterans.
>
> (d3) Schindler was required to make known to its employees the existence of any such plan to take affirmative action to employ and advance in employment qualified veterans of the Vietnam era at all levels of employment, including the executive level.

Exhibit E -- The 05/12/2004 sworn deposition of my former direct superior, District Manager, Charlie Gutowski admitting he never read the SEC (Schindler Elevator Corporation) Policies and Procedures Manual. An affirmative action program for veterans is required by VEVRAA to be posted in the federal contractors' employee manual.

(e1) Mr. Gutowski, District Manager and the highest ranking Schindler official in the 620 12th Ave, New York office, failed to offer me a copy of Schindler's employee manual. Schindler cannot provide a signed receipt that I ever received the employee handbook as provided in Exhibit F, Chapter 007 "Receipt of Policies and Procedures Manual," Bates stamped SCH000430.

(e2) Mr. Gutowski admitted in sworn depositions that he himself had never read Schindler's employee manual.

Exhibit F -- The 05/12/2004 sworn deposition of Charlie Gutowski stating Regional V.P. Michael Landis hired non veteran John Quinn to replace me as Regional Modernization Manager contradicting findings in the OFCCP report.

(f1) **Mr. Landis is not a veteran**. The OFCCP's grossly negligent misrepresentation of Mr. Landis as a veteran in this report is offensive and fraudulent. Regarding the selection of Mr. Quinn as my replacement, the report falsely states, "…the selecting officials were Vietnam Era veterans" (page 7, ¶ 5). This is an erroneous and misleading statement.

(f2) Mr. Quinn was Schindler's inside choice and the only candidate to assume the position of Regional Modernization Manager upon my demotion and constructive discharge. If I had accepted the demotion, I would have been reporting to Mr. Quinn who was clearly <u>not as qualified</u> for the position of Regional Modernization Manager as I was. Additionally, Mr. Quinn worked in the position for only approximately three months before resigning and seeking employment in a different company. Moreover, Schindler currently has two managers in the Modernization Department doing the same work I did alone.

(f3) Mr. Landis is not a veteran. Mr. Landis unfairly demoted me, forced me out of the company and hired a less qualified non veteran to replace me despite my veteran status.

ANALYSIS

According to Title 41, Part 60 of the Code of Federal Regulations, 741.62 (a) If a compliance review, complaint investigation or other review by OFCCP finds a material violation of the act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if the OFCCP determines that a settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to) such make whole remedies as back pay and retroactive seniority.

- **The OFCCP chose to accept assurances of compliance from the contractor instead of lawfully negotiating enforcement with reparations to the complainant. The mandates of VEVRAA were proven to be violated by the contractor by the U.S. Department of Labor's own sources, but intentionally lied about in an official OFCCP report.**
  1) Early in the investigation, upon learning through Department of Labor sources that this wealthy and sophisticated federal contractor had not filed the required yearly VETS 100 reports, and that this contractor was in deliberative, complete violation of its affirmative action obligations, the OFCCP had sufficient evidence to initiate settlement discussions and negotiate a just resolution of the violations, as per Chapter 6 of the OFCCP Compliance Manual (FCCM). Conciliation efforts are mandatory

- **The OFCCP failed to inform me of any conciliation meeting or agreement with Schindler as required in Title 41, Part 60, 741.62(a) of the Code of Federal Regulations and the OFCCP has not required Schindler to offer any financial remedies to me.**
  1) My counsel advised me that there is no private cause of action under VEVRAA.
  2) I filed a civil suit against Schindler for breach of contract, constructive discharge and defamation of character; the charges of defamation and constructive discharge were dismissed without prejudice to them being re-filed in State Court.
  3) I have incurred over $77,000.00 in legal bills engaging in costly depositions and discovery opposing this contractor since July 2003 and those resources have been utilized in the OFCCP's investigation.
  4) As a result of my constructive discharge, I now earn less in wages and benefits in my current position as Manager of the Maintenance/Repair Department of Transel Elevator than I earned as Regional Modernization Manager of Schindler Elevator.

5) In addition to suffering the negative financial aftereffects of Schindler's defamatory and discriminatory actions against me, the corrupt and fraudulent statements in the OFCCP's written report serve to further discredit my reputation as a U.S. Army veteran and as a manager in the elevator industry, continuously damaging my earning ability.

- **The required impartiality of the investigation was breached in order to obtain compliance by the contractor and achieve a "win" for the OFCCP.**
  1) The inaccuracies in the OFCCP investigation findings all favor Schindler's position, strongly suggesting collusion and a cover up.
  2) The on-site audit was to be conducted within a timely period following my April 2004 complaint, however it was unexplainably delayed until September and the delay gave Schindler enough time to formulate future compliance plans.
  3) The actual date of the OFCCP internal audit of 620 12th Ave, NY, NY is misstated.
  4) The OFCCP report falsely asserts that the highest ranking officer making the decision to demote me, Regional Vice President, Michael Landis, is a Vietnam veteran. (page 4, ¶ 2). (page 7, ¶ 5). Mr. Landis is not a veteran.
  5) The OFCCP never properly attempted to negotiate a satisfactory resolution of the complaint.

- **District Director Hodge and Compliance Officer King violated OFCCP regulations.**
  1) They ignored sworn testimony and proffered false facts in the results of the investigation in their written report dated February 7, 2005.
  2) They tried to hide the contractor's longstanding willful noncompliance under VEVRAA. Their submission of the February 7, 2005 report is corrupt and unlawful and may well be the tip of an iceberg of additional criminal actions if they were motivated by personal financial gain in accepting corrupt payment or the promise of professional advancement.

CONCLUSION

I submit this timely appeal and substantiating evidence in accordance with 41 CFR 60-741.26(g), 60-250.26(g), 60-1.24(c) and based on reasonable cause, I ask that you order the reconsideration of the determination and commence the negotiation of a proper conciliation agreement, seeking "make whole" relief to me from the contractor. I ask for a just resolution of the violations and for this appeal to be addressed promptly as the charges herein against Ms. Hodge and Ms. King must be immediately referred to the Deputy Assistant Secretary for Federal Contract Compliance and the Solicitor of Labor for action.

Sincerely,

Daniel Kirk
Complainant
U.S. Army Veteran of Vietnam

Exhibit D to Kirk Affirmation—
Letter from Patsy Baker Blackshear, Ph.D, dated
June 2, 2005

U.S. Department of Labor

Employment Standards Administration
Office of Federal Contract
Compliance Programs
Washington, D.C. 20210

JUN - 2 2005

Mr. Daniel Kirk
1 Shawn Court
Middletown, New Jersey 07748

Dear Mr. Kirk:

This is in response to your letter dated March 7, 2005, requesting reconsideration of the finding of no-violation in your complaint against Schindler Elevator Corporation, alleging discrimination due to your veterans' status, in violation of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).

We have requested that our Northeast Regional Office forward your case file to the National Office for an administrative review. Please be assured that, after a review of all of the facts, we will notify you of the agency's determination.

Sincerely,

PATSY BAKER BLACKSHEAR, Ph.D.
Director
Division of Program Operations

U.S. Department of Labor
2-030

200 Constitution Avenue, N.W.
Washington, D.C. 20210

Official Business
Penalty for Private Use $300

Mr. Daniel Kirk
1 Shawn Court
Middletown, New Jersey 07748

Exhibit E to Kirk Affirmation—
Letter from Patsy Baker Blackshear, Ph.D, to Daniel Kirk,
dated June 30, 2005

U.S. Department of Labor

Employment Standards Administration
Office of Federal Contract
Compliance Programs
Washington, D.C. 20210

JUN 30 2005

Mr. Daniel Kirk
1 Shawn Court
Middletown, New Jersey 07748

Dear Mr. Kirk:

This is in response to your letter of June 15, 2005 in which you request a meeting to personally discuss the details of the request for reconsideration in your complaint against Schindler, Inc., filed April 27, 2004 under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA).

On June 2, 2005, we requested your case file from the Northeast Regional Office in order for us to conduct an administrative review. An administrative review consists of an in-depth review of the entire case file which includes the facts gathered during the investigation. We also consider all information that you have submitted with your request for reconsideration.

During the administrative review process, we do not meet with complainants or contractors to discuss the merits of a case. However, we will provide a final determination to you and the contractor once the administrative review is completed.

Please be assured that, after consideration of the facts of your case, we will notify you of our agency's determination.

Sincerely,

PATSY BAKER BLACKSHEAR, Ph.D.
Director
Division of Program Operations

Exhibit F to Kirk Affirmation—
Letter from Daniel Kirk to Jacqueline C Joseph-Veal, Esq.,
dated July 30, 2007

One Shawn Court
Middletown, NJ 07748

July 30, 2007

VIA FACSIMILE:
(202) 693-1305

Jacqueline C. Joseph-Veal, Esq.
Branch Chief of Enforcement & Appeals
Division of Program Operations, OFCCP
United States Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

RE: ***Daniel Kirk v. Schindler Elevator Corporation***
Appeal of Complaint No. 100119824

Dear Ms. Joseph-Veal:

Thank you very much for speaking to my wife, Linda Kirk, about the progress of my appeal. We are pleased to hear that you are close to issuing a decision. We appreciate your continued efforts to resolve this matter.

I am writing, as you requested, to summarize our position that the OFCCP's February 2005 decision was erroneous. For the reasons set forth below, I request that OFCCP issue a ruling as soon as possible with the following findings:

1. That the February 2005 decision was clearly erroneous to the extent that it found Schindler in compliance with VEVRAA.

2. That Schindler did not implement any procedure for the self-identification of its employees who are covered veterans, as required by VEVRAA and its implementing regulations.

3. That Schindler did not adopt or implement an affirmative action plan, as required by VEVRAA and its implementing regulations.

In response to my FOIA request of April 2, 2007, the Northeast Regional Office in New York has released redacted copies of numerous documents related to the 2004 complaint investigation of my former employer Schindler Elevator Corporation that expressly contradict

many of the OFCCP's erroneous findings in the February 2005 decision. These documents require that the original decision be vacated.

First, as early as September 2004, the OFCCP knew that Schindler did not have a process in place for employees to self-identify their veteran status. This fact is clearly stated in the Compliance Officer's interview report of Schindler's Corporate EEO Manager, Annette Selvaggio (Exhibit 1). As the senior officer responsible for monitoring Schindler's compliance with VEVRAA and preparing the annual VETS-100 reports, Ms. Selvaggio's testimony is conclusive on this point. Her view is confirmed by Schindler's failure to produce the required invitations to self-identify veterans. There is no evidence in the record to support OFCCP's finding that Schindler implemented a self-identification procedure at any time.

Second, the Northeast Region provided the 2004 Affirmative Action Plan for Individuals with Disabilities/ Covered Veterans submitted by "Schindler Elevator Company." (Exhibit 2). This document is the only basis in the record for OFCCP's finding that Schindler complied with VEVRAA's requirement the contractors must implement a satisfactory affirmative action plan for covered veterans. However, the document demonstrates that Schindler did not comply with VEVRAA.

As you know, Title 41 CFR Part 60-250, Subpart C, requires contractors to prepare and maintain an affirmative action program at each establishment that set forth the contractor's policies and procedures. Contractors must insure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees who are known to be covered veterans for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The Schindler Plan, by contrast, provides no protection whatever for covered veterans.

The Schindler Plan is defective for many other reasons:

- The Plan is neither signed nor dated, and there is no evidence in the record to suggest it was formally adopted or disseminated by Schindler.

- The Plan identifies a non-existent entity, The Schindler Elevator Company, as the employer. This error makes the entire Plan ineffective, since the real employer is the Schindler Elevator Corporation, and further suggests that the Plan was never formally adopted by Schindler.

- Under the regulations, an official must be assigned responsibility and his/her identity must appear on all internal and external communications as well as the plan itself. Schindler's Plan delegates responsibility to numerous un-named managers. While the "site manager" has overall responsibility, the "Corporate EEO Manager" (Annette Selvaggio) is responsible for communication. "Senior Management" has overall responsibility for implementation, while day-to-day responsibility is delegated to the human resource management group. "Managers

at each region location" are responsible to carry out the "goals and objectives" of the Plan, while "Line Managers and Supervisors" are responsible for taking appropriate affirmative action, and the Vice President is responsible for equal employment services at the facility.

- Although the Plan states that the equal employment policy appears in the "Policy and Procedures Manual," neither the Veteran Affirmative Action Plan nor a notice of the plan can be found in the manual (#4 Dissemination of Policy) (I have previously provided the "Policies and Procedures Manual" to OFCCP in my appeal (Exhibit D)).

- The requirement for positive recruitment is also non-compliant as the Plan fails to comply with local job posting requirements. The Plan for the New York region provides, "[t]he establishment lists all job openings for which external candidates are being sought (except executive and top management positions) with the *Ohio* office of the state employment service" (#11 Listing of Employment Openings) (Emphasis supplied) (Exhibit 2).

Finally, Schindler's Corporate EEO Manager, Annette Selvaggio, admits that she has "never had a request for the Veteran's affirmative action program from employees" (Exhibit 1). This evidence is consistent with my statement in my 4/15/2004 complaint, "I do not believe they have affirmative action in place for Veterans. I have never seen their affirmative action plan nor do they have one posted." I have also submitted Walter Cooper's sworn declaration to the same effect. It is clear that no Schindler employee was aware of the Plan.

The 2004 Veteran Affirmative Action Plan proffered by Schindler contains many unresolved deficiencies that should have resulted in the issuance of a show cause notice, notice of violations and a conciliation agreement with the contractor. Under such circumstances, as afforded by Title 41 CFR Part 60-741.62, make whole relief such as back pay and lost benefits can be sought by an aggrieved employee that notifies OFCCP of the deficiency.

In light of these clear violations of VEVRAA, Schindler's 2003 and 2004 VETS-100 reports are false and misleading attempts to appear compliant with VEVRAA. The Compliance Officer who interviewed Ms. Selvaggio on September 17, 2004 provided technical assistance regarding the process to invite veterans to self-identify by discussing the regulations. (See Exhibit 1). However, Schindler ignored this assistance and filed three fraudulent VETS-100 reports for the twelve month period ending September 30, 2004 without offering its employees an invitation to self-identify as a veteran. Without completed self-identification forms, Schindler could not have filed accurate 2004 VETS-100 reports. Indeed, it would have been impossible for Schindler to distribute, collect and tabulate responses to an invitation to self-identify for its entire workforce within such a short period of time.

Similarly, Schindler's 2003 VETS-100 report provided to OFCCP in support of its defense in the complaint investigation is false and was never actually filed (Exhibit 3).

According to Robert Wilson, Chief Investigation and Compliance Division, Office of the Assistant Secretary for Veteran's Employment and Training (VETS), Schindler did not file any VETS-100 reports for the year 2003 (Exhibit 4). How could accurate reports be filed in 2003 when Schindler's Corporate EEO Manager disclosed in September 2004 the fact that there was no process in place for employees to self identify their veteran status?

For these reasons, I ask that you take immediate action to reverse OFCCP's determination concerning Schindler's compliance with VEVRAA. In light of the attached exhibits, that determination was clearly erroneous.

Sincerely,

Daniel Kirk
Complainant
U. S. Army Veteran of Vietnam

Copy to: Christopher Harig, OFCCP Sr. Equal Opportunity Specialist (EOS)

Exhibit G to Kirk Affirmation—
Letter from Linda Kirk to the Bureau of Labor Statistics, dated
November 5, 2004

Linda Kirk
1 Shawn Court
Middletown, New Jersey 07748

Director, Office of Information, Management and Budget
Bureau of Labor Statistics
Rm 4040 Postal Square Bldg
2 Massachusetts Ave NE
Washington, DC 20212-0001

November 5, 2004

RE: F.O.I.A. REQUEST

Dear Sir or Madam:

I'm writing to request copies under the Freedom of Information Act of the annual VETS-100 submission for the years **2004, 2003, 2002** for the following federal contractor:

SCHINDLER ELEVATOR CORPORATION
20 Whippany Road
Morristown, NJ 07960-4539
And
SCHINDLER ELEVATOR CORPORATION
620 12th Avenue
New York, New York 10036

DUNS: 094809993
CAGE/NCAGE: 79292

Please send the copies to: Linda Kirk
1 Shawn Court
Middletown, New Jersey 07748

Thank you,

Linda Kirk

Linda Kirk

U.S. Department of Labor

Office of the Assistant Secretary for
Veterans Employment and Training
Washington, D.C. 20210

[illegible]

Ms. Linda Kirk
1 Shawn Court
Middletown, New Jersey 07748

Re: Freedom of Information Act (FOIA) Request

Dear Ms. Kirk:

Your Freedom of Information Act request addressed to the Bureau of Labor Statistics has been referred to our office for action.

The policy of the Assistant Secretary of Veterans Employment and Training Service (ASVET) is to make, to the extent possible, full disclosure of records according to the provisions of the Freedom of Information Act. A search of records produced the enclosed reports for the year 2004. Under the Privacy Act information was redacted. No records responsive to your request for the years 2002 and 2003 were found.

You have the right to appeal this determination within 90 days from the date of this response. An appeal must be in writing and state the grounds for appeal, including the supporting statements or arguments. You should include copies of your initial request and this response. The appeal should be sent to the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Both the envelope and the letter of appeal should be **marked clearly "Freedom of Information Act Appeal"**.

Sincerely,

/s/

ROBERT WILSON
Chief, Investigation and Compliance Division

Enclosures

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO 1293-0005
Expires: November 30, 2004

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

9143464

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment Headquarters ☐ Multiple Establishment Hiring Location ☐ Multiple Establishment Consolidated (specify number of locations) _____(MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items duplicated above ADD Company Contact Information Below)

COMPANY No. 0739687		TWELVE MONTH PERIOD ENDING M M D D Y Y Y Y	0 9 3 0 2 0 0 4
NAME OF PARENT COMPANY (If different) SCHINDLER ELEVATOR CORPORATION		ADDRESS (NUMBER AND STREET) 20 WHIPPANY ROAD	
CITY MORRISTOWN	COUNTY MORRIS	STATE NJ	ZIP CODE 07960-4736
NAME OF COMPANY CONTACT Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT (973) 397-6411 Annette_Selvaggio@us.schindler.com	

NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET)	
CITY	COUNTY	STATE	ZIP CODE

NAICS 333921 DUNS 09-480-9993 EMPLOYER ID (IRS TAX No.) 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN _ M AND N LINE 3 1 9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9 AND COLUMNS L, M, N AND O, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	NUMBER OF EMPLOYEES: VIETNAM ERA VETERANS (M)	NUMBER OF EMPLOYEES: OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	NEW HIRES (PREVIOUS 12 MONTHS): VIETNAM ERA VETERANS (P)	NEW HIRES (PREVIOUS 12 MONTHS): RECENTLY SEPARATED VETERANS (Q)	NEW HIRES (PREVIOUS 12 MONTHS): OTHER PROTECTED VETERANS (R)	NEW HIRES (PREVIOUS 12 MONTHS): TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
1		2	1					
2		5						
3								
4								
5		2						
6								
7								
8								
9								
10								61

Report the total six-month and maximum number of permanent employees during the period covered by this report.

Maximum Number [redacted] Minimum Number [redacted]

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO 1293-0005
Expires November 30, 2004

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS 100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment Headquarters ☐ Multiple Establishment Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 6 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above AND Company Contact Information Below)

COMPANY No.	TWELVE MONTH PERIOD ENDING
0729687	09/30/2004 (M M D D Y Y Y Y)
NAME OF PARENT COMPANY: SCHINDLER ELEVATOR CORPORATION	ADDRESS (NUMBER AND STREET): 20 WHIPPANY ROAD
CITY: MORRISTOWN	COUNTY: MORRIS / STATE: NJ / ZIP CODE: 07960-4535
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973) 397-6411 Annette_Selvaggio@us.schindler.com

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)
Schindler Elevator Corporation	
CITY	COUNTY / STATE / ZIP CODE

NAICS 233215 DUNS 09-480-9993 EMPLOYER ID (IRS TAX #) 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN I, M AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1		4						
2								
3								
4								
5								
6								
7								
8								
9								
10					1			93

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number [redacted] Minimum Number [redacted]

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO 1293-0005
Expires November 30 2004

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 728
Lanham, Maryland 20703-0728

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
[X] Prime Contractor [ ] Subcontractor	[ ] Single Establishment [ ] Multiple Establishment Headquarters [ ] Multiple Establishment Hiring Location [X] Multiple Establishment State Consolidated (specify number of locations) 41 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above ADD Company Contact Information below)

COMPANY NO.	TWELVE MONTH PERIOD ENDING
029687	09/30/2004 (M M D D Y Y Y Y)

NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)		
SCHINDLER ELEVATOR CORPORATION	20 WHIPPANY ROAD		
CITY	**COUNTY**	**STATE**	**ZIP CODE**
MORRISTOWN	MORRIS	NJ	07960-4735
NAME OF COMPANY CONTACT	**TELEPHONE AND EMAIL FOR CONTACT**		
Annette Selvaggio	Annette_Selvaggio@us.schindler.com	(973) 397-6411	

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)		
Schindler Elevator Corporation			
CITY	**COUNTY**	**STATE**	**ZIP CODE**
		NJ	

NAICS 333921 DUNS 09-480-9993 EMPLOYER ID (IRS TAX NO.) 36-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9 AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL (ONLY HIRES BOTH VETERANS AND NON-VETERANS) (S)
1 OFFICIALS AND MANAGERS								
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS								
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVES (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								36

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number [redacted] Minimum Number [redacted]

[redacted]

Exhibit H to Kirk Affirmation—
Letter from Linda Kirk to Rob Wilson, dated
January 17, 2005

Linda Kirk
1 Shawn Court
Middletown, NJ 07748

Mr. Rob Wilson, Chief
Investigation and Compliance Division
VETS Office of Agency Management and Budget
United States Department of Labor
Frances Perkins Building
200 Constitution Ave., NW
Washington, DC 20210

January 17, 2005

RE: FREEDOM OF INFORMATION ACT requests

Dear Mr. Wilson,

Thank you for your recent help in my quest to obtain the VETS 100 reports I sent for last November. My research necessitates additional VETS 100 reports so I again ask for their production under the Freedom of Information Act. I request the VETS-100 submissions for the years 1998, 1999, 2000, 2001 for the following federal contractor.

SCHINDLER ELEVATOR CORPORATION
20 Whippany Road
Morristown, NJ 07960-4539
And
SCHINDLER ELEVATOR CORPORATION/MILLAR ELEVATOR
620 12th Avenue
New York, New York 10036

DUNS 094809993
CAGE/NCAGE: 79292

As you know, federal agencies are required to respond to a FOIA request within twenty days, but since my first request in November was unexplainably delayed, I'm asking for this request to be processed on an expedited basis. Please send the requested copies to

Linda Kirk
1 Shawn Court
Middletown, New Jersey 07748
Phone: (732) 671-7687

Thank you,

Linda Kirk

U.S. Department of Labor

Office of the Assistant Secretary for
Veteran's Employment and Training
Washington, D.C. 20210

SEP 29 2005

Ms. Linda Kirk
1 Shawn Court
Middletown, New Jersey 07748

Re: Freedom of Information Act (FOIA) Request

Dear Ms. Kirk:

Your Freedom of Information Act request addressed to the Bureau of Labor Statistics has been referred to our office for action.

The policy of the Assistant Secretary of Veterans Employment and Training Service (ASVET) is to make, to the extent possible, full disclosure of records according to the provisions of the Freedom of Information Act. A search of records produced the enclosed reports for the year 2001. Under the Privacy Act information was redacted. No records responsive to your request for the years 1998, 1999 and 2000 were found.

You have the right to appeal this determination within 90 days from the date of this response. An appeal must be in writing and state the grounds for appeal, including the supporting statements or arguments. You should include copies of your initial request and this response. The appeal should be sent to the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Both the envelope and the letter of appeal should be **marked clearly "Freedom of Information Act Appeal"**.

Sincerely,

ROBERT WILSON
Chief, Investigation and Compliance Division

Enclosures

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location X Multiple Establishment-State Consolidated (specify number of locations) 9 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)
0729687	09/30/2002

NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)
Schindler Elevator Corporation	20 Whippany Road

CITY	COUNTY	STATE	ZIP CODE
Morristown	Morris	NJ	07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)

CITY	COUNTY	STATE	ZIP CODE
		NY	

NAICS	DUNS	EMPLOYER ID (IRS TAX No.)
3534	09-480-9993	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S, ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN O, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		5	1					
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS								
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293 0005
Expires 12-31-2002

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
8131 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☒ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☐ Multiple Establishment-State Consolidated (specify number of locations) _____ (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (M M D D Y Y Y Y)		
0729687	0930 2002		
NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)		
Schindler Elevator Corporation	20 Whippany Road		
CITY	COUNTY	STATE	ZIP CODE
Morristown	Morris	NJ	07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)		
CITY	COUNTY	STATE	ZIP CODE
		NJ	

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES WITH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		5						
2 PROFESSIONALS		7						
3 TECHNICIANS								
4 SALES WORKERS								
5 OFFICE AND CLERICAL		2						
6 CRAFT WORKERS (SKILLED)		1	1					
7 OPERATIVES (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS		1						
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 3 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No	TWELVE MONTH PERIOD ENDING			
0729687	09 (M M)	30 (D D)	2002 (Y Y Y Y)	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road			
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07960	

NAME OF HIRING LOCATION:	ADDRESS (NUMBER AND STREET):		
CITY:	COUNTY:	STATE: NC	ZIP CODE:

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1		2	1					
PROFESSIONALS 2		3	2					
TECHNICIANS 3								
SALES WORKERS 4		1	1					
OFFICE AND CLERICAL 5								
CRAFT WORKERS (SKILLED) 6								
OPERATIVES (SEMI-SKILLED) 7		9	8					
LABORERS (UNSKILLED) 8								
SERVICE WORKERS 9								
TOTAL 10								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO.1293-0005
Expires 12-31-2002

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor ☑ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 4 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)	
0729687	09/30/2002	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET):	
CITY:	COUNTY:	STATE: PA / ZIP CODE:

NAICS: 3534 DUNS: 09-480-9993 EMPLOYER ID (IRS TAX No.): 34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN O, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		5	2					
2 PROFESSIONALS		3	2					
3 TECHNICIANS		2	2					
4 SALES WORKERS		2						
5 OFFICE AND CLERICAL		1	1					
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)		4	2					
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☐ Prime Contractor ☐ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 8 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)
0729687	09302002

NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)		
Schindler Elevator Corporation	20 Whippany Road		
CITY	**COUNTY**	**STATE**	**ZIP CODE**
Morristown	Morris	NJ	07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)		
CITY	**COUNTY**	**STATE**	**ZIP CODE**
		OH	

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		5						
2 PROFESSIONALS		2						
3 TECHNICIANS		1	1					
4 SALES WORKERS		1						
5 OFFICE AND CLERICAL		2						
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)		3						
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO.1293-0005
Expires 12-31-2002

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U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 6 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)
0729687	09 30 2002

NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)
Schindler Elevator Corporation	20 Whippany Road

CITY	COUNTY	STATE	ZIP CODE
Morristown	Morris	NJ	07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)

CITY	COUNTY	STATE	ZIP CODE
		TX	

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S, ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	NUMBER OF EMPLOYEES: VIETNAM ERA VETERANS (M)	NUMBER OF EMPLOYEES: OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	NEW HIRES (PREVIOUS 12 MONTHS): VIETNAM ERA VETERANS (P)	NEW HIRES (PREVIOUS 12 MONTHS): NEWLY SEPARATED VETERANS (Q)	NEW HIRES (PREVIOUS 12 MONTHS): OTHER PROTECTED VETERANS (R)	NEW HIRES (PREVIOUS 12 MONTHS): TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		4						
2 PROFESSIONALS		1						
3 TECHNICIANS								
4 SALES WORKERS								
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location X Multiple Establishment-State Consolidated (specify number of locations) 2 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (M M D D Y Y Y Y)	
0729687	0 9 3 0 2 0 0 2	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION:	ADDRESS (NUMBER AND STREET):	
CITY:	COUNTY:	STATE: VA / ZIP CODE:

NAICS	3 5 3 4		DUNS	0 9 - 4 8 0 - 9 9 9 3	EMPLOYER ID (IRS TAX No.)	3 4 - 1 2 7 0 0 5 6

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1				[redacted]				
PROFESSIONALS 2								
TECHNICIANS 3								
SALES WORKERS 4			1					
OFFICE AND CLERICAL 5								
CRAFT WORKERS (SKILLED) 6								
OPERATIVES (SEMI-SKILLED) 7								
LABORERS (UNSKILLED) 8								
SERVICE WORKERS 9								
TOTAL 10	[redacted]							

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☐ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) ____ (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)	
0729687	09302001	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)	
CITY	COUNTY	STATE: WI / ZIP CODE

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S, ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	NUMBER OF EMPLOYEES: VIETNAM ERA VETERANS (M)	NUMBER OF EMPLOYEES: OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	NEW HIRES (PREVIOUS 12 MONTHS): VIETNAM ERA VETERANS (P)	NEW HIRES (PREVIOUS 12 MONTHS): RECENTLY SEPARATED VETERANS (Q)	NEW HIRES (PREVIOUS 12 MONTHS): OTHER PROTECTED VETERANS (R)	NEW HIRES (PREVIOUS 12 MONTHS): TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1		1		[redacted]				
PROFESSIONALS 2								
TECHNICIANS 3								
SALES WORKERS 4								
OFFICE AND CLERICAL 5								
CRAFT WORKERS (SKILLED) 6								
OPERATIVES (SEMI-SKILLED) 7								
LABORERS (UNSKILLED) 8								
SERVICE WORKERS 9								
TOTAL 10	[redacted]							

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☐ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)
0729687	09/30/2002

NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)		
Schindler Elevator Corporation	20 Whippany Road		
CITY	**COUNTY**	**STATE**	**ZIP CODE**
Morristown	Morris	NJ	07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)		
CITY	**COUNTY**	**STATE**	**ZIP CODE**
		AR	

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES [illegible] ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
1 OFFICIALS AND MANAGERS		1						
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS								
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVES (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 5 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)	
0729687	09 30 2002	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)	
CITY	COUNTY	STATE: CA / ZIP CODE

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

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JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	NUMBER OF EMPLOYEES: VIETNAM ERA VETERANS (M)	NUMBER OF EMPLOYEES: OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	NEW HIRES (PREVIOUS 12 MONTHS): VIETNAM ERA VETERANS (P)	NEW HIRES (PREVIOUS 12 MONTHS): NEWLY SEPARATED VETERANS (Q)	NEW HIRES (PREVIOUS 12 MONTHS): OTHER PROTECTED VETERANS (R)	NEW HIRES (PREVIOUS 12 MONTHS): TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1		1	1					
PROFESSIONALS 2		1						
TECHNICIANS 3								
SALES WORKERS 4		1						
OFFICE AND CLERICAL 5								
CRAFT WORKERS (SKILLED) 6								
OPERATIVES (SEMI-SKILLED) 7								
LABORERS (UNSKILLED) 8								
SERVICE WORKERS 9								
TOTAL 10								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (M M D D Y Y Y Y)	
0729687	0 9 3 0 2 0 0 2	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)	
CITY	COUNTY	STATE: CO / ZIP CODE

NAICS	3 5 3 4	DUNS	0 9 - 4 8 0 - 9 9 9 3	EMPLOYER ID (IRS TAX No.)	3 4 - 1 2 7 0 0 5 6

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN O, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1		1						
PROFESSIONALS 2								
TECHNICIANS 3								
SALES WORKERS 4								
OFFICE AND CLERICAL 5								
CRAFT WORKERS (SKILLED) 6								
OPERATIVES (SEMI-SKILLED) 7								
LABORERS (UNSKILLED) 8								
SERVICE WORKERS 9								
TOTAL 10								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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RETURN COMPLETED REPORT TO:
U S DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☐ Prime Contractor ☐ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING	
0729687		09/30/2002 (M M / D D / Y Y Y Y)
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)	
CITY	COUNTY	STATE: DO / ZIP CODE

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS								
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS								
5 OFFICE AND CLERICAL		1						
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
5101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)		
0729687	09/30/2001		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07960

NAME OF HIRING LOCATION:	ADDRESS (NUMBER AND STREET):		
CITY:	COUNTY:	STATE: CT	ZIP CODE:

NAICS:	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		1						
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS		1						
5 OFFICE AND CLERICAL		1						
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
0101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 5 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)	
0729687	09 30 2001	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)	
CITY	COUNTY	STATE: FL / ZIP CODE

NAICS	DUNS	EMPLOYER ID (IRS TAX NO.)
3534	09-480-9993	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINE 3.1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		2						
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS								
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12/31/2002

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RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 2 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No:	TWELVE MONTH PERIOD ENDING		
0729687	09/30/2002 (MM/DD/YY)		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07960

NAME OF HIRING LOCATION:	ADDRESS (NUMBER AND STREET):		
CITY:	COUNTY:	STATE: GA	ZIP CODE:

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX NO.): 34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		1						
2 PROFESSIONALS		1						
3 TECHNICIANS								
4 SALES WORKERS								
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 3 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)
0729687	09 30 2002

NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)
Schindler Elevator Corporation	20 Whippany Road

CITY	COUNTY	STATE	ZIP CODE
Morristown	Morris	NJ	07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)

CITY	COUNTY	STATE	ZIP CODE
		LA	

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENT SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1		1						
2								
3								
4		1						
5								
6								
7								
8								
9								
10								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
[X] Prime Contractor [X] Subcontractor	[ ] Single Establishment [ ] Multiple Establishment-Headquarters [ ] Multiple Establishment-Hiring Location [X] Multiple Establishment-State Consolidated (specify number of locations) 3 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No:	TWELVE MONTH PERIOD ENDING (MM DD YYYY)	
0729687	09 30 2002	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)	
CITY	COUNTY	STATE: IL / ZIP CODE

NAICS: 3534 DUNS: 09-480-9993 EMPLOYER ID (IRS TAX No.): 34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		2	2					
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS		1						
5 OFFICE AND CLERICAL		1						
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVES (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor ☑ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) ___1___ (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)		
0729687	09 30 2002		
NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)		
Schindler Elevator Corporation	20 Whippany Road		
CITY	COUNTY	STATE	ZIP CODE
Morristown	Morris	NJ	07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)		
CITY	COUNTY	STATE	ZIP CODE
		ID	

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1								
PROFESSIONALS 2								
TECHNICIANS 3								
SALES WORKERS 4		1						
OFFICE AND CLERICAL 5								
CRAFT WORKERS (SKILLED) 6								
OPERATIVES (SEMI-SKILLED) 7								
LABORERS (UNSKILLED) 8								
SERVICE WORKERS 9								
TOTAL 10								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293 0005
Expires 12-31-2002

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VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment Headquarters ☐ Multiple Establishment Hiring Location ☒ Multiple Establishment Status Consolidated (specify number of locations) 2 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)
0729687	09 30 2002

NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)
Schindler Elevator Corporation	20 Whippany Road

CITY	COUNTY	STATE	ZIP CODE
Morristown	Morris	NJ	07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)

CITY	COUNTY	STATE	ZIP CODE
		MA	

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS								
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS		1						
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293 0005
Expires 12 31 2002

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U S DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☐ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 4 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No	TWELVE MONTH PERIOD ENDING (M M D D Y Y Y Y)	
0729687	0 9 3 0 2 0 0 2	
NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)	
Schindler Elevator Corporation	20 Whippany Road	
CITY	COUNTY	STATE / ZIP CODE
Morristown	Morris	NJ 07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)	
CITY	COUNTY	STATE / ZIP CODE
		MD

NAICS	DUNS	EMPLOYER ID (IRS TAX No)
3 5 3 4	0 9 - 4 8 0 - 9 9 9 3	3 4 - 1 2 7 0 0 5 6

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1		1	1					
PROFESSIONALS 2		1						
TECHNICIANS 3								
SALES WORKERS 4		2	1					
OFFICE AND CLERICAL 5								
CRAFT WORKERS (SKILLED) 6								
OPERATIVE (SEMI-SKILLED) 7								
LABORERS (UNSKILLED) 8								
SERVICE WORKERS 9								
TOTAL 10								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor ☑ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 4 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)	
0729687	09302002	
NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)	
Schindler Elevator Corporation	20 Whippany Road	
CITY	COUNTY	STATE / ZIP CODE
Morristown	Morris	NJ 07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)	
CITY	COUNTY	STATE / ZIP CODE
		MI

NAICS	DUNS	EMPLOYER ID (IRS TAX No.)
3534	09-480-9993	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		3	1					
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS		1						
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
8101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) ___1___ (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)	
0729687	09 30 2002	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)	
CITY:	COUNTY:	STATE: MN / ZIP CODE:

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9 AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1		1						
PROFESSIONALS 2								
TECHNICIANS 3								
SALES WORKERS 4								
OFFICE AND CLERICAL 5								
CRAFT WORKERS (SKILLED) 6								
OPERATIVES (SEMI-SKILLED) 7								
LABORERS (UNSKILLED) 8								
SERVICE WORKERS 9								
TOTAL 10								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12 31-2002

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 2 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY NO.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)	
0729687	0 5 3 0 2 0 0 2	
NAME OF PARENT COMPANY	ADDRESS (NUMBER AND STREET)	
Schindler Elevator Corporation	20 Whippany Road	
CITY	COUNTY	STATE / ZIP CODE
Morristown	Morris	NJ 07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET)	
CITY	COUNTY	STATE / ZIP CODE
		MO

NAICS	DUNS	EMPLOYER ID (IRS TAX NO.)
3534	09-480-9993	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S, ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		2						
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS								
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVES (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor ☑ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) ____1____ (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No:	TWELVE MONTH PERIOD ENDING (MM DD YYYY)	
0729687	09302003	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION:	ADDRESS (NUMBER AND STREET):	
CITY:	COUNTY:	STATE: NJ / ZIP CODE:

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-8. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		1						
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS								
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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U S DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☐ Prime Contractor ☐ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No:	TWELVE MONTH PERIOD ENDING (MM DD YYYY)	
0729687	09 30 2002	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION:	ADDRESS (NUMBER AND STREET):	
CITY:	COUNTY:	STATE: NJ / ZIP CODE:

NAICS	3534	DUNS	09-480-9993	EMPLOYER ID (IRS TAX No.)	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS								
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS		1						
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO. 1293-0005
Expires 12-31-2002

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U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor ☑ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY NO.	TWELVE MONTH PERIOD ENDING (MM DD YYYY)	
0729687	09/30/2002	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION	ADDRESS (NUMBER AND STREET):	
CITY:	COUNTY:	STATE: NV / ZIP CODE:

NAICS	DUNS	EMPLOYER ID (IRS TAX No.)
3534	09-480-9993	34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S, ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2001 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		1						
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS								
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVES (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☒ Multiple Establishment-State Consolidated (specify number of locations) ____ (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No:	TWELVE MONTH PERIOD ENDING (M M D D Y Y Y Y)	
0729687	0 9 3 0 2 0 0 2	
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ / ZIP CODE: 07960

NAME OF HIRING LOCATION:	ADDRESS (NUMBER AND STREET):	
CITY:	COUNTY:	STATE: AL / ZIP CODE:

NAICS: 3 5 3 4	DUNS: 0 9 - 4 8 0 - 9 9 9 3	EMPLOYER ID (IRS TAX No.): 5 4 - 1 2 7 0 0 5 6

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS								
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS		1						
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO 1293-0005
Expires 12-31-2002

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U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

0729687-1270
Schindler Elevator Corporation
ATTN: Human Resource/EEO Department
P.O. Box 1935
Morristown, NJ 07962-1935

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☒ Prime Contractor ☒ Subcontractor	☐ Single Establishment ☐ Multiple Establishment Headquarters ☐ Multiple Establishment Hiring Location X Multiple Establishment-State Consolidated (specify number of locations) 2 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No:	TWELVE MONTH PERIOD ENDING			
0729687	0930 (MMDD) 2002 (YYYY)			
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road			
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07960	

NAME OF HIRING LOCATION:	ADDRESS (NUMBER AND STREET):		
CITY:	COUNTY:	STATE: PR	ZIP CODE:

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE. DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS		1						
2 PROFESSIONALS								
3 TECHNICIANS								
4 SALES WORKERS								
5 OFFICE AND CLERICAL								
6 CRAFT WORKERS (SKILLED)								
7 OPERATIVE (SEMI-SKILLED)								
8 LABORERS (UNSKILLED)								
9 SERVICE WORKERS								
10 TOTAL								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

Exhibit I to Kirk Affirmation—
Facsimile regarding: Freedom of Information Act Request

To: Mr. Robert Wilson, Chief
Investigation and Compliance Division
Veterans Employment and Training Service
U.S. Department of Labor

Fax number: (202) 693-4755

From: Linda Kirk
Fax number: (740) 358-2467

Date: 4/10/2007

Regarding:
FREEDOM OF INFORMATION ACT REQUEST

Phone number for follow-up:
(732) 671-7687

page 1 of 2

Comments:

F.O.I.A. REQUEST:

I request any and all VETS 100 reports that were submitted for the years 2005 and 2006 for the following company:

SCHINDLER ELEVATOR CORPORATION

Please send the requested documents within 20 business days to

Mrs. Linda Kirk
One Shawn Court
Middletown, New Jersey 07748

Thank you very much

Linda Kirk

Subject: FOIA request for Schindler Elevator Corp
2005 and 2006
Date: Mon, 14 May 2007 17:18:28 -0400
From: "Rudert, Eric - VETS" <Rudert.Eric@dol.gov>
To: <lkirk88@yahoo.com>
cc: "Wilson, Robert - VETS" <Wilson.Robert2@dol.gov>

May 14, 2007

Ms. Linda Kirk
1 Shawn Court
Middleton, NJ 07748

Dear Ms. Kirk,

The Department of Labor's Veterans' employment and Training Service(VETS) has identified the information you have requested, and they are attached to this email. The records identified include:

1. VETS-100 from Schindler Elevator Corporation for the 2005 reporting period
2. VETS-100 from Schindler Elevator Corporation for the 2006 reporting period

I do not consider this a denial of your FOIA request. However, you have the right to appeal this determination within 90 days from the date of this response. An appeal must be in writing and state the grounds for appeal, including the supporting statements or arguments. You should include copies of your initial request and this response. The appeal should be sent to the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Both the envelope and the letter of appeal should be marked clearly "Freedom of Information Act Appeal".

Sincerely,

Eric Rudert
Assistant Director
Office of Agency Management and Budget
Veterans Employment and Training Service
U.S. Department of Labor

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS EMPLOYMENT

OMB No. 1293-0005
Expires: [illegible]

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 47 (MSC)

ATTN: Human Resources/EEO Department

COMPANY IDENTIFICATION INFORMATION (Insert items preprinted above. ADD Company Contact Information Below)

CONTRACT No. 0729687		TWELVE MONTH PERIOD ENDING 9/1/2005	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973) 397-6411 annette.selvaggio@us.schindler.com		
NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAICS 3534	DUNS 09-420-9993	EMPLOYER ID 34-1270056 (IRS TAX No.)	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS 1, 2, AND 3. LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS 6, 7, 8, AND 9. ENTRIES IN COLUMNS 1, 2, 3, 6, 7, AND 8 SHOULD ADD ACROSS AND COLUMNS 1, 2, AND 3 LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (1)	OTHER PROTECTED VETERANS (2)	OTHER PROTECTED VETERANS (3)	SPECIAL DISABLED VETERANS (6)	OTHER PROTECTED VETERANS (7)	RECENTLY SEPARATED VETERANS (8)	OTHER PROTECTED VETERANS (9)	TOTAL NEW HIRES (BOTH VETERANS AND NON VETERANS) (5)
1	0	4	0	0	0	0	0	0
2	1	2	0	0	0	0	0	0
3	0	1	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0
5	0	4	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0
9	0	1	0	0	0	0	0	0
10	1	10	0	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
330	330

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No. 1293-0005
Expires June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 4 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. Add Company Contact Information Below)

COMPANY ID: 0729687	TWELVE MONTH PERIOD ENDING: 9/1/2005
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY: Morristown	COUNTY: Morris / STATE: NJ / ZIP CODE: 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 1200 Hagerville Road
CITY: Gettysburg	COUNTY: Adams / STATE: PA / ZIP CODE: 17325
NAICS: 3534	DUNS: 09-480-9993
EMPLOYER ID: 34-1270056 (IRS TAX No.)	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS E, M, AND S. LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS E, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (E)	NUMBER OF EMPLOYEES: VIETNAM-ERA VETERANS (M)	NUMBER OF EMPLOYEES: OTHER PROTECTED VETERANS (S)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	NEW HIRES (PREVIOUS 12 MONTHS): VIETNAM-ERA VETERANS (P)	NEW HIRES (PREVIOUS 12 MONTHS): RECENTLY SEPARATED VETERANS (Q)	NEW HIRES (PREVIOUS 12 MONTHS): OTHER PROTECTED VETERANS (R)	NEW HIRES (PREVIOUS 12 MONTHS): TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
EXECUTIVE/SENIOR OFFICIALS 1	0	4	1					
PROFESSIONALS 2	0	2	1					
TECHNICIANS 3	0	2	2					
SALES WORKERS 4	0	0	1					
OFFICE AND CLERICAL 5	0	2	0					
CRAFT WORKERS (SKILLED) 6	0	2	0					
OPERATIVES (SEMI-SKILLED) 7	0	2	0					
LABORERS (UNSKILLED) 8	0	0	1					
SERVICE WORKERS 9	0	0	0					
TOTAL 10	0	14	6	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to the collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

ATTN: Human Resources/EEO Department

COMPANY IDENTIFICATION INFORMATION (Do not retype preprinted above ADD/Company Contact Information Below)

COMPANY No. 072968?	TWELVE MONTH PERIOD ENDING 9/1/2005
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY Morristown	COUNTY Morris / STATE NJ / ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 8801 Park Central Drive, Suite 100
CITY Richmond	COUNTY / STATE VA / ZIP CODE 23227
NAICS 3534	DUNS 09-480-9963 / EMPLOYER ID (IRS TAX No.) 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS M AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N, AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 EXECUTIVES AND MANAGERS	0	1	0	0	0	0	0	0
2 PROFESSIONALS	0	0	0	0	0	0	0	0
3 TECHNICIANS	0	0	0	0	0	0	0	0
4 SALES WORKERS	0	0	1	0	0	0	0	0
5 OFFICE AND CLERICAL	0	0	0	0	0	0	0	0
6 CRAFT WORKERS (SKILLED)	0	0	0	0	0	0	0	0
7 OPERATIVES (SEMI-SKILLED)	0	0	0	0	0	0	0	0
8 LABORERS (UNSKILLED)	0	0	0	0	0	0	0	0
9 SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL	0	1	1	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Print items preprinted above AND Company Contact Information Below)

COMPANY No. 0729687	TWELVE MONTH PERIOD ENDING 9/1/2005
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY Morristown	COUNTY Morris / STATE NJ / ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 15413 Ne 95th Street
CITY Redmond	COUNTY / STATE WA / ZIP CODE 98052
NAICS 3534	DUNS 09-480-9993
EMPLOYER ID (IRS TAX No.) 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N, AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES OTHER VETERANS AND NEW VETERANS (S)
EXECUTIVES AND MANAGERS 1	0	0	1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PROFESSIONALS 2	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TECHNICIANS 3	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SALES WORKERS 4	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OFFICE AND CLERICAL 5	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
CRAFT WORKERS (SKILLED) 6	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OPERATIVES (SEMI-SKILLED) 7	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
LABORERS (UNSKILLED) 8	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SERVICE WORKERS 9	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL 10	[illegible]	[illegible]	[illegible]	0	0	[illegible]	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY ID# 0729687	TWELVE MONTH PERIOD ENDING 9/1/2005
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY Morristown	COUNTY Morris / STATE NJ / ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 400 Hardin Road Suite 170
CITY Little Rock	COUNTY / STATE AR / ZIP CODE 72211
NAICS 3534 / DUNS 09-480-9993	EMPLOYER ID 34-1270056 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N, AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS	0	0	0	0	0	0	0	0
2 PROFESSIONALS	0	0	0	0	0	0	0	0
3 TECHNICIANS	0	0	0	0	0	0	0	0
4 SALES WORKERS	0	1	0	0	0	0	0	0
5 OFFICE AND CLERICAL	0	0	0	0	0	0	0	0
6 CRAFT WORKERS (SKILLED)	0	0	0	0	0	0	0	0
7 OPERATIVES (SEMI-SKILLED)	0	0	0	0	0	0	0	0
8 LABORERS (UNSKILLED)	0	0	0	0	0	0	0	0
9 SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL	0	0	0	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment: Headquarters
	☐ Multiple Establishment: Hiring Location
	☑ Multiple Establishment: State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/1/2005	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411	
NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 6950 West Jefferson Ave., Suite 210	
CITY Lakewood	COUNTY	STATE CO	ZIP CODE 80235
NAICS 3534	DUNS 09-480-9993	EMPLOYER ID (IRS TAX No.) 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
		SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS	1	0	1	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PROFESSIONALS	2	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TECHNICIANS	3	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SALES WORKERS	4	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OFFICE AND CLERICAL	5	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
CRAFT WORKERS (SKILLED)	6	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OPERATIVE (SEMI-SKILLED)	7	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
LABORERS (UNSKILLED)	8	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SERVICE WORKERS	9	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL	10	[illegible]	[illegible]	[illegible]	0	0	[illegible]	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resources (HR) Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information below.)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/1/2005	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411	
NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 850 Brook Street	
CITY Rocky Hill	COUNTY	STATE CT	ZIP CODE 06067
NAICS 3534	DUNS 09-480-9993	EMPLOYER ID (IRS TAX No.) 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N, AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
1 OFFICIALS AND MANAGERS	0	2	0					
2 PROFESSIONALS	0	0	0					
3 TECHNICIANS	0	0	0					
4 SALES WORKERS	0	0	1					
5 OFFICE AND CLERICAL	0	1	0					
6 CRAFT WORKERS (SKILLED)	0	0	0					
7 OPERATIVE (SEMI-SKILLED)	0	0	0					
8 LABORERS (UNSKILLED)	0	0	0					
9 SERVICE WORKERS	0	0	0					
10 TOTAL	0	3	1	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No. 1293-0005
Expires: June 30, 2005

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment - Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items prepared above. ADD Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/1/2005	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411	
NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 2716 7th Ave. S	
CITY Birmingham	COUNTY	STATE AL	ZIP CODE 35233
NAICS 3534	DUNS 09-480-9993	EMPLOYER ID (IRS TAX No.) 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (COL O+P+R) AND NEW VETERANS (S)
1 OFFICIALS AND MANAGERS	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
2 PROFESSIONALS	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
3 TECHNICIANS	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
4 SALES WORKERS	0	1	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
5 OFFICE AND CLERICAL	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
6 CRAFT WORKERS (SKILLED)	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
7 OPERATIVES (SEMI-SKILLED)	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
8 LABORERS (UNSKILLED)	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
9 SERVICE WORKERS	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
10 TOTAL	[redacted]	[redacted]	[redacted]	0	0	[redacted]	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

ATTN: Human Resources & EO Department

COMPANY IDENTIFICATION INFORMATION (If not shown as prepared above: Add Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/1/2005	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown		COUNTY Morris	STATE NJ ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Salvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411	
NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 6600 Highlands Parkway	
CITY Smyrna		COUNTY	STATE GA ZIP CODE 30082
NAICS 3534	DUNS 09-480-9093	EMPLOYER ID (IRS TAX No.) 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VETERANS OF THE VIETNAM ERA (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VETERANS OF THE VIETNAM ERA (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES THAT ARE BOTH VETERANS AND MEN (S)
OFFICIALS AND MANAGERS 1	0	0	0					
PROFESSIONALS 2	0	1	0					
TECHNICIANS 3	0	0	0					
SALES WORKERS 4	0	0	0					
OFFICE AND CLERICAL 5	0	0	0					
CRAFT WORKERS (SKILLED) 6	0	0	0					
OPERATIVE (SEMI-SKILLED) 7	0	0	0					
LABORERS (UNSKILLED) 8	0	0	0					
SERVICE WORKERS 9	0	0	0					
TOTAL 10	0	1	0	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment: Headquarters
	☐ Multiple Establishment: Hiring Location
	☑ Multiple Establishment: State Consolidated (specify number of locations): 0 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below.)

COMPANY No. 0720687		TWELVE MONTH PERIOD ENDING: 9/17/2005	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY: Morristown		COUNTY: Passaic	STATE: NJ ZIP CODE: 07962
NAME OF COMPANY CONTACT		TELEPHONE AND EMAIL FOR CONTACT 0	
NAME OF HIRING LOCATION		ADDRESS (NUMBER AND STREET)	
CITY		COUNTY	STATE ZIP CODE
NAICS	DUNS	EMPLOYER ID: 34-1270056 (IRS TAX No.)	

EMPLOYER DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN J, K, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
		SPECIAL DISABLED VETERANS (J)	VIETNAM-ERA VETERANS (K)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (OTHER VETERANS AND NON-VETERANS) (S)
OFFICIALS AND MANAGERS	1	0	2	0					
PROFESSIONALS	2	0	0	0					
TECHNICIANS	3	0	1	0					
SALES WORKERS	4	0	0	0					
OFFICE AND CLERICAL	5	0	0	0					
CRAFT WORKERS (SKILLED)	6	0	1	0					
OPERATIVE (SEMI-SKILLED)	7	0	0	0					
LABORERS (UNSKILLED)	8	0	0	0					
SERVICE WORKERS	9	0	0	0					
TOTAL	10	0	3	0	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Print items preprinted above. Add Company Contact Information Below.)

COMPANY Inc. 0720687	TWELVE MONTH PERIOD ENDING 9/1/2005
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY Morristown	COUNTY Morris / STATE NJ / ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET)
CITY Las Vegas	COUNTY Las Vegas / STATE NV / ZIP CODE 89119
NAICS 3534 / DUNS 03-480-9993	EMPLOYER ID 34-1270056 (IRS TAX NO.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES OF VETERANS AND NEW VETERANS (S)
1 OFFICIALS AND MANAGERS	0	1	0	0	0	0	0	0
2 PROFESSIONALS	0	0	0	0	0	0	0	0
3 TECHNICIANS	0	0	0	0	0	0	0	0
4 SALES WORKERS	0	0	0	0	0	0	0	0
5 OFFICE AND CLERICAL	0	0	0	0	0	0	0	0
6 CRAFT WORKERS (SKILLED)	0	0	0	0	0	0	0	0
7 OPERATIVE (SEMI-SKILLED)	0	0	0	0	0	0	0	0
8 LABORERS (UNSKILLED)	0	0	0	0	0	0	0	0
9 SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL	0	1	0	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
20	20

VETS 100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No. 1293-0005
Expires: June 30, 2006

Persons are not required to respond to the collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS 100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 4 (MSC)

ATTN: Human Resources/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items prepopulated above. Add Company Contact Information Below)

COMPANY ID NO. 0729687		TWELVE MONTH PERIOD ENDING 9/1/2005	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAME OF COMPANY CONTACT Aurelio Salvagio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411	
NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 620 12th Avenue	
CITY New York	COUNTY New York	STATE NY	ZIP CODE 10036
NAICS 35-14	DUNS 05-486-9993	EMPLOYER ID (IRS TAX No.) 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS A, B AND C. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS D, E, F, G AND H. ENTRIES IN COLUMNS D, E, F, AND G ARE OPTIONAL FOR THE FIRST REPORTING CYCLE AND ARE MANDATORY THEREAFTER. ADDITIONAL INSTRUCTIONS ARE PROVIDED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (A)	VETERANS (B)	OTHER PROTECTED VETERANS (C)	SPECIAL DISABLED VETERANS (D)	VETERANS (E)	RECENTLY SEPARATED VETERANS (F)	OTHER PROTECTED VETERANS (G)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (H)
1	0	4	1	0	0	0	0	0
2	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0	0
6	0	0	2	0	0	0	0	0
7	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0
TOTAL 10				0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: Dec. 30, 2006

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 220
Latham, Maryland 20751-0220

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment - Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 5 (MSC)

ATTN: Human Resources/EEO Department

COMPANY IDENTIFICATION INFORMATION (Read items preprinted above. ADD Company Contact Information Below)

COMPANY ID: 0725687	TWELVE MONTH PERIOD ENDING: 9/1/2005
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road
CITY: Morristown	COUNTY: Morris / STATE: NJ / ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Salvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411
NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 1530 Timberwolf Drive
CITY: Holland	COUNTY: / STATE: OH / ZIP CODE: 43528
NAICS: 3534	DUNS: 09-480-9993
EMPLOYER ID: 34-1270056 (IRS TAX NO.)	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS A, B, AND C. LINES FOR DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS D, E, Q, R, AND S. ENTRIES IN COLUMNS D, E, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS T, M, N AND O, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (A)	VIETNAM-ERA VETERANS (B)	OTHER PROTECTED VETERANS (C)	SPECIAL DISABLED VETERANS (D)	VIETNAM-ERA VETERANS (E)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
1	0	0	0	0	0	0	0	0
2	0	4	1	0	0	0	0	0
3	0	0	1	0	0	0	0	0
4	0	1	0	0	0	0	0	0
5	0	4	1	0	0	0	0	0
6	0	9	0	0	0	0	0	0
7	0	1	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 226
Lanham, Maryland 20703-9726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

ATTN: Human Resources/EO Department

COMPANY IDENTIFICATION INFORMATION (Omit items prepared above. Add Company Contact Information Below)

COMPANY No. 0729587		TWELVE MONTH PERIOD ENDING 9/1/2005	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411	

NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 13122 NE David Circle Suite 400	
CITY Portland	COUNTY	STATE OR	ZIP CODE 97230

NAICS 3534	DUNS 09-480-9083	EMPLOYER ID (IRS TAX No.) 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS E, M, AND N. LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS E, M, N, AND Q, LINE 10 (GRAY SHADED AREAS), ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (E)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
EXECUTIVE/SENIOR OFFICIALS 1	0	1	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
MANAGERS 2	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible] 3	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible] 4	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible] 5	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible] 6	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible] 7	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible] 8	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible] 9	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL 10	[illegible]	[illegible]	[illegible]	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Ladson, Maryland 20785-0726

ATTN: Human Resources/EO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 3 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY NO.: 0729687		TWELVE MONTH PERIOD ENDING: 9/1/2005	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Salvatore		TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411	
NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 1201 West Loop North Suite 130	
CITY: Houston	COUNTY	STATE: TX	ZIP CODE: 77055
NAICS: 3534	DUNS: 07-480-9263	EMPLOYER ID: 34-1270056 (IRS TAX No.)	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N. LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (WITH VETERANS AND NON-VETERANS) (S)
1 EXECUTIVES AND MANAGERS	0	3	0	0	0	0	0	2
2 SALES STAFF	0	1	0	0	0	0	0	0
3 OFFICE STAFF	0	0	0	0	0	0	0	0
4 SKILLED WORKERS	0	1	1	0	0	0	0	0
5 SEMI-SKILLED OPERATIVES	0	0	0	0	0	0	0	0
6 UNSKILLED WORKERS (LABORERS)	0	0	0	0	0	0	0	0
7 APPRENTICES (SALES)	0	0	0	0	0	0	0	0
8 APPRENTICES (UNSKILLED)	0	0	0	0	0	0	0	0
9 SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL				0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. Add Company Contact Information Below)

COMPANY No. 0729687	TWELVE MONTH PERIOD ENDING 9/1/2005
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY Morristown	COUNTY Morris / STATE NJ / ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 1906 Wright Street
CITY Madison	COUNTY / STATE WI / ZIP CODE 53704
NAICS 3534 / DUNS 09-480-9953	EMPLOYER ID (IRS TAX No.) 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
1	0	1	0	0	0	0	0	0
2	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2006

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Landover, Maryland 20785-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/1/2005	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio		TELEPHONE AND E-MAIL FOR CONTACT (973)397-6411	
NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 2800 W. 70th Street	
CITY Shreveport	COUNTY	STATE LA	ZIP CODE 71108

NAICS 3534	DUNS 09-480-9993	EMPLOYER ID (IRS TAX No.) 34-1270056

EMPLOYER DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN E, M, AND N. LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N, AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

EEO CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
OFFICIALS AND MANAGERS 1	0	0	1	0	0	0	0	0
PROFESSIONALS 2	0	0	0	0	0	0	0	0
TECHNICIANS 3	0	0	0	0	0	0	0	0
SALES WORKERS 4	0	0	0	0	0	0	0	0
OFFICE AND CLERICAL 5	0	0	0	0	0	0	0	0
CRAFT WORKERS (SKILLED) 6	0	0	0	0	0	0	0	0
OPERATIVES (SEMI-SKILLED) 7	0	0	0	0	0	0	0	0
LABORERS (UNSKILLED) 8	0	0	0	0	0	0	0	0
SERVICE WORKERS 9	0	0	0	0	0	0	0	0
TOTAL 10	0	0	1	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
1	1

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resources/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 3 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/1/2005	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411	
NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 13800 Nw 2nd St Suite 140	
CITY Sunrise	COUNTY	STATE FL	ZIP CODE 33325

NAICS 3534	DUNS 09-480-9993	EMPLOYER ID (IRS TAX No.) 34-1270056

EMPLOYER DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
		SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS	1	0	1	1	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
PROFESSIONALS	2	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TECHNICIANS	3	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SALES WORKERS	4	0	2	1	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OFFICE AND CLERICAL	5	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
CRAFT WORKERS (SKILLED)	6	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OPERATIVES (SEMI-SKILLED)	7	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
LABORERS (UNSKILLED)	8	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SERVICE WORKERS	9	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TOTAL	10	[redacted]	[redacted]	[redacted]	0	0	[redacted]	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment: Headquarters
	☐ Multiple Establishment: Hiring Location
	☑ Multiple Establishment: State Consolidated (specify number of locations) 3 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Insert items preprinted above. ADD Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/1/2005	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411	
NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 6310 West Howard Street	
CITY: Niles	COUNTY	STATE: IL	ZIP CODE: 60714
NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID: 34-1270050 (IRS TAX No.)	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES WITH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS	0	1	2	0	0	0	0	0
2 PROFESSIONALS	0	1	1	0	0	0	0	0
3 TECHNICIANS	0	0	0	0	0	0	0	0
4 SALES WORKERS	0	0	1	0	0	0	0	0
5 OFFICE AND CLERICAL	0	1	0	0	0	0	0	0
6 CRAFT WORKERS (SKILLED)	0	0	1	0	0	0	0	0
7 OPERATIVES (SEMI-SKILLED)	0	0	0	0	0	0	0	0
8 LABORERS (UNSKILLED)	0	0	0	0	0	0	0	0
9 SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL	0	3	4	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 2 (MSC)

ATTN: Human Resources/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No. 0729687	TWELVE MONTH PERIOD ENDING 9/27/2006
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY Morristown	COUNTY Morris / STATE NJ / ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Salvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411 annette.salvaggio@us.schindler.com
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 850 Brook Street
CITY Rocky Hill	COUNTY Hartford / STATE CT / ZIP CODE 06067
NAICS 3435	DUNS 09-480-9993
EMPLOYER ID 34-1270058 (IRS TAX No.)	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
1 OFFICIALS AND MANAGERS	0	1	0	0	0	0	0	1
2 PROFESSIONALS	0	0	0	0	0	0	0	0
3 TECHNICIANS	0	0	0	0	0	0	0	0
4 SALES WORKERS	0	0	0	0	0	0	0	0
5 OFFICE AND CLERICAL	0	1	0	0	0	0	0	0
6 CRAFT WORKERS (SKILLED)	0	0	0	0	0	0	0	0
7 OPERATIVES (SEMI-SKILLED)	0	0	0	0	0	0	0	0
8 LABORERS (UNSKILLED)	0	0	0	0	0	0	0	0
9 SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL	0	2	0	0	0	0	0	10

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
90	80

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 6 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/27/2006	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411 annette.selvaggio@us.schindler.com	

NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 16450 Foothill Blvd	
CITY Sylmar	COUNTY Los Angeles	STATE CA	ZIP CODE 91342

NAICS 3435	DUNS	EMPLOYER ID (IRS TAX NO.) 34-1270856

EMPLOYER DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	1. SPECIAL DISABLED VETERANS (L)	2. VIETNAM-ERA VETERANS (M)	3. OTHER PROTECTED VETERANS (N)	4. SPECIAL DISABLED VETERANS (O)	5. VIETNAM-ERA VETERANS (P)	6. RECENTLY SEPARATED VETERANS (Q)	7. OTHER PROTECTED VETERANS (R)	8. TOTAL NEW HIRES OTHER VETERANS AND NON-VETERANS (S)
1. EXECUTIVE AND SENIOR MANAGERS	1	0	0	0	0	0	0	3
2. PROFESSIONALS	0	0	0	0	0	0	0	2
3. TECHNICIANS	0	0	0	0	0	0	0	0
4. SALES WORKERS	1	2	0	0	0	1	0	7
5. OFFICE AND CLERICAL	0	2	0	0	0	0	0	3
6. CRAFT WORKERS (SKILLED)	0	1	0	0	0	0	0	2
7. OPERATIVE (SEMI-SKILLED)	0	0	0	0	0	0	0	2
8. LABORERS (UNSKILLED)	0	0	0	0	0	0	0	4
9. SERVICE WORKERS	0	0	0	0	0	0	0	0
10. TOTAL	2	5	0	0	0	2	0	23

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
602	521

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Officer
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment-Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment-State Consolidated (specify number of locations) 36 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. Add Company Contact Information Below)

COMPANY No. 0729687	TWELVE MONTH PERIOD ENDING 9/27/2006
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY Morristown	COUNTY Morris / STATE NJ / ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 2440 E. Tudor Road #235
CITY Anchorage	COUNTY / STATE AK / ZIP CODE 99507-1185
NAICS 3534	DUNS 09-480-9933
EMPLOYER ID (IRS TAX NO.) 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
1	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
2	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
3	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
4	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
5	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
6	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
7	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
8	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
9	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
10	[redacted]	[redacted]	[redacted]	0	0	[redacted]	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
0	2

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor ☑ Subcontractor	☑ Single Establishment ☐ Multiple Establishment Headquarters ☐ Multiple Establishment Hiring Location ☐ Multiple Establishment-State Consolidated (specify number of locations)) (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. Add Company Contact Information Below.)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/27/2006	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown		COUNTY Morris	STATE NJ ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411	
NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 1200 Biglerville Road	
CITY Gettysburg		COUNTY Adams	STATE PA ZIP CODE 17325
NAICS 3534	DUNS 09-483-9993	EMPLOYER ID (IRS TAX No.) 34-1270056	

EMPLOYER DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS	0	1	0	0	0	0	0	3
2 PROFESSIONALS	0	2	1	0	1	0	0	2
3 TECHNICIANS	0	3	1	0	1	0	1	2
4 SALES WORKERS	0	0	0	0	0	0	0	0
5 OFFICE AND CLERICAL	0	0	0	0	0	0	0	0
6 CRAFT WORKERS (SKILLED)	0	0	0	0	0	0	0	2
7 OPERATIVE (SEMI-SKILLED)	1	4	5	0	3	0	2	35
8 LABORERS (UNSKILLED)	0	0	0	0	0	0	0	0
9 SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL	[illegible]	[illegible]	[illegible]	0	5	[illegible]	3	49

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
372	353

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS EMPLOYMENT

OMB NO. 1293-0005
Expires June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resources/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [x] Single Establishment
- [ ] Multiple Establishment: Headquarters
- [ ] Multiple Establishment: Hiring Location
- [ ] Multiple Establishment: State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below.)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/27/2006	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411	

NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 920 South Vandemark Road	
CITY Sidney	COUNTY Shelby	STATE OH	ZIP CODE 45365

NAICS 3534	DUNS 09-483-9993	EMPLOYER ID 34-1270056 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
		SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
OFFICIALS AND MANAGERS	1	0	0	0					
PROFESSIONALS	2	0	2	0					
TECHNICIANS	3	0	0	0					
SALES WORKERS	4	0	0	0					
OFFICE AND CLERICAL	5	0	0	0					
CRAFT WORKERS (SKILLED)	6	0	0	0					
OPERATIVES (SEMI-SKILLED)	7	0	1	0					
LABORERS (UNSKILLED)	8	0	0	0					
SERVICE WORKERS	9	0	0	0					
TOTAL	10	0	3	0	0	3	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
312	77

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires June 30, 2018

Persons are not required to respond to the collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 326
Lanham, Maryland 20703-0326

ATTN: Human Resource EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. Add Company Contact Information Below.)

COMPANY #: 072968?	TWELVE MONTH PERIOD ENDING: 09/27/2000
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road
CITY: Morristown	COUNTY: Morris / STATE: NJ / ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND E-MAIL FOR CONTACT: (973)397-6411
NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 2448 So Progress Dr
CITY: West Valley	COUNTY: Salt Lake / STATE: UT / ZIP CODE: 84115
NAICS: 3534 / DUNS: 09-480-9953	EMPLOYER ID: 34-1270056 (IRS TAX NO.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN I, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS I, M, AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (I)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES DURING REPORTING PERIOD WHO ARE VETERANS (S)
OFFICIALS AND MANAGERS 1	0	0	0			0		0
PROFESSIONALS 2	0	0	0			0		0
TECHNICIANS 3	0	0	0			0		0
SALES WORKERS 4	0	0	0			0		0
OFFICE AND CLERICAL 5	0	0	0			0		0
CRAFT WORKERS (SKILLED) 6	0	0	0			0		0
OPERATIVES (SEMI-SKILLED) 7	0	0	0			0		0
LABORERS (UNSKILLED) 8	0	0	0			0		0
SERVICE WORKERS 9	0	0	0			0		0
TOTAL 10				0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
16	12

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No. 1293-0005
Expires: June 30, 2008

RETURN COMPLETED REPORT TO

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

You are not required to respond to the collection of information unless it displays a valid OMB number.

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Locations
- [x] Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

ADD'L Division Personnel/EEO Department

COMPANY IDENTIFIER AND INFORMATION (Print across pages) (Leave ADD Company Contact Information Below)

CONTRACT NO. 0729681	TWELVE MONTH PERIOD ENDING 9/27/2008
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY Morristown	COUNTY Morris / STATE NJ / ZIP CODE 07962
NAME OF COMPANY CONTACT Arnaldo Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 13122 NE Davel Circle Suite 400
CITY Portland	COUNTY Multnomah / STATE OR / ZIP CODE 97230
NAICS 3435	DUNS 09-480-9923
EMPLOYER ID (IRS TAX NO.) 34-1270956	

EMPLOYER DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS A AND B. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS C, D, E, F, AND G. ENTRIES IN COLUMNS C, D, E, AND F, LINES 1 THROUGH 9, AND COLUMNS E, M, AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. DEFINITIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	(A) SPECIAL DISABLED VETERANS	(B) VIETNAM-ERA VETERANS	(C) OTHER PROTECTED VETERANS	(D) SPECIAL DISABLED VETERANS	(E) VIETNAM-ERA VETERANS	(F) RECENTLY SEPARATED VETERANS	(G) OTHER PROTECTED VETERANS	(H) TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS)
1. EXECUTIVE/SENIOR LEVEL OFFICIALS AND MANAGERS	0	1	0					
2. FIRST/MID LEVEL OFFICIALS AND MANAGERS	0	0	0					
3. PROFESSIONALS	0	0	0					
4. TECHNICIANS	0	0	0					
5. SALES WORKERS	0	0	0					
6. ADMINISTRATIVE SUPPORT WORKERS	0	0	0					
7. CRAFT WORKERS (SKILLED)	0	0	0					
8. OPERATIVES (SEMI-SKILLED)	0	0	0					
9. LABORERS (UNSKILLED)	0	0	0					
10. TOTAL				0	0	0	0	12

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
93	82

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 776
Earlham, Maryland 20703-0776

ADD'N: Human Resource Dir/Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF REPORT (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 1 (MSA)

COMPANY IDENTIFICATION INFORMATION (Complete items preceded above. ADD Company Contact information below)

COMPANY No. 0729687	TWELVE MONTH PERIOD ENDING 9/21/2006
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY Morristown	COUNTY Morris / STATE NJ / ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411 annette.selvaggio@us.schindler.com
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 5350 E Street
CITY Omaha / COUNTY Douglas / STATE NE / ZIP CODE 68117	
DUNS 345 / DUNS 09-480-9993	EMPLOYER ID 34-1270056 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE REPORTED FOR ESTABLISHMENTS. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS G-J. ONLY ONE ENTRIES IN COLUMNS G-J. ONLY SHADED LINES (HORIZONTALLY AND COLUMNS C, H AND J) ARE REQUIRED (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FOR HOW TO BE DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (A)	VIETNAM-ERA VETERANS (B)	OTHER PROTECTED VETERANS (C)	SPECIAL DISABLED VETERANS (G)	VIETNAM-ERA VETERANS (H)	RECENTLY SEPARATED VETERANS (I)	OTHER PROTECTED VETERANS (J)	TOTAL NEW HIRES DURING THE PAST 12 MONTHS WHO ARE VETERANS (K)
EXECUTIVE/SENIOR OFFICIALS	0	1	0					
MANAGERS	0	2	0					
SUPERVISORS	0	0	0					
FOREMEN/WOMEN	0	0	0					
TECHNICIANS	0	0	0					
SALES WORKERS	0	0	0					
OFFICE/CLERICAL	0	2	0					
CRAFT WORKERS (SKILLED)	0	0	0					
OPERATIVES (SEMI-SKILLED)	0	0	0					
LABORERS (UNSKILLED)	0	0	0					
SERVICE WORKERS	0	0	0					
TOTAL	0	5	0	0	0	0	0	5

Report the total maximum and minimum number of permanent employees during the period covered by this report

Maximum Number	Minimum Number
22	13

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (If not same as prepopulated above, ADD Company Contact Information Below)

COMPANY Tax ID: 0729681	TWELVE MONTH PERIOD ENDING: 9/27/2008
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road
CITY: Morristown	COUNTY: Morris STATE: NJ ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com
NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): Calle 19 Lote 1a
CITY: San Juan	COUNTY: Catano STATE: PR ZIP CODE: 00962
NAICS: 54151	DUNS: 09-480-9093 EMPLOYER ID: 34-1270056 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES, WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS E, M, AND N. LINES FOR DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (E)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
1 EXECUTIVE/SENIOR LEVEL OFFICIALS AND MANAGERS	0	0	0					
2 FIRST/MID LEVEL OFFICIALS AND MANAGERS	0	0	0					
3 PROFESSIONALS	0	0	0					
4 SALES WORKERS	0	0	0					
5 ADMINISTRATIVE SUPPORT WORKERS	0	0	0					
6 CRAFT WORKERS (SKILLED)	0	0	0					
7 OPERATIVES (SEMI-SKILLED)	0	0	0					
8 LABORERS (UNSKILLED)	0	0	0					
9 SERVICE WORKERS	0	0	0					
10 TOTAL	0	0	0	0	0	0	0	3

Report the total maximum and minimum number of permanent employees during the period covered by this report

Maximum Number	Minimum Number
120	117

VETS-100B DEPARTMENT OF LABOR REPORT FOR CONTRACTOR VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to the collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Upham, Maryland 20701-0726

ALL Human Resources/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items prepainted above. ADD Company Contact Information Below)

COMPANY ID: 0729687	TWELVE MONTH PERIOD ENDING: 9/27/2006
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road
CITY: Morristown	COUNTY: Morris / STATE: NJ / ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973) 397-6411 annette.selvaggio@us.schindler.com
NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 5251 Greenway Drive
CITY: Jackson	COUNTY: Hinds / STATE: MS / ZIP CODE: 39204
NAICS: 3453	DUNS: 03-480-9993
EMPLOYER ID: 34-1270956 (IRS TAX No.)	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N. LINES FOR DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S. LINES 1 THROUGH 9, AND COLUMNS L, M, N AND O, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	NUMBER OF EMPLOYEES: OTHER PROTECTED VETERANS (M)	NUMBER OF EMPLOYEES: ALL OTHERS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	NEW HIRES (PREVIOUS 12 MONTHS): OTHER PROTECTED VETERANS (P)	NEW HIRES (PREVIOUS 12 MONTHS): RECENTLY SEPARATED VETERANS (Q)	NEW HIRES (PREVIOUS 12 MONTHS): OTHER PROTECTED VETERANS (R)	NEW HIRES (PREVIOUS 12 MONTHS): TOTAL NEW HIRES OTHER THAN SPECIAL DISABLED VETERANS AND OTHER PROTECTED VETERANS (S)
EXECUTIVE/SENIOR MANAGERS	0	0	0	0	0	0	0	0
MIDDLE MANAGERS	0	0	0	0	0	0	0	0
SUPERVISORS	0	0	0	0	0	0	0	0
SALES WORKERS	0	0	0	0	0	0	0	0
OFFICE AND CLERICAL	0	0	0	0	0	0	0	0
CRAFT WORKERS (SKILLED)	0	0	0	0	0	0	0	0
OPERATIVES (SEMI-SKILLED)	0	0	0	0	0	0	0	0
LABORERS (UNSKILLED)	0	0	0	0	0	0	0	0
SERVICE WORKERS	0	0	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number:	Minimum Number:
16	11

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 0 (MSC)

ATTN: Human Resources/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items prepopulated above. ADD Company Contact Information Below)

COMPANY ID: 0729687	TWELVE MONTH PERIOD ENDING: 9/27/2006
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY: Morristown	COUNTY: Morris / STATE: NJ / ZIP CODE: 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411 annette.selvaggio@us.schindler.com
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET)
CITY	COUNTY / STATE / ZIP CODE
NAICS	DUNS
EMPLOYER ID: 34-1270056 (IRS TAX No.)	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N. LINES FOR DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS), ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	NUMBER OF EMPLOYEES: VETERANS ERA VETERANS (M)	NUMBER OF EMPLOYEES: OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	NEW HIRES (PREVIOUS 12 MONTHS): VETERANS ERA VETERANS (P)	NEW HIRES (PREVIOUS 12 MONTHS): NEWLY SEPARATED VETERANS (Q)	NEW HIRES (PREVIOUS 12 MONTHS): OTHER PROTECTED VETERANS (R)	NEW HIRES (PREVIOUS 12 MONTHS): TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
EXECUTIVE AND MANAGERIAL (C)	0	4	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PROFESSIONAL (D)	0	1	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TECHNICIANS (E)	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SALES WORKERS (F)	0	1	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OFFICE AND CLERICAL (G)	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
CRAFT WORKERS (SKILLED) (H)	0	0	1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
OPERATIVES (SEMI-SKILLED) (I)	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
LABORERS (UNSKILLED) (J)	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SERVICE WORKERS (K)	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL (10)	0	[illegible]	[illegible]	0	0	[illegible]	1	130

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
188	365

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Latham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 11 (MSC)

COMPANY IDENTIFICATION INFORMATION (Insert items preprinted above. ADD Company Contact Information Below.)

COMPANY No. 072968J	TWELVE MONTH PERIOD ENDING 9/27/2008
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY Morristown	COUNTY Morris / STATE NJ / ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411 annette.selvaggio@us.schindler.com
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 620 12th Avenue
CITY New York	COUNTY New York / STATE NY / ZIP CODE 10036
NAICS 3435	DUNS
EMPLOYER ID 34-1270056 (IRS TAX No.)	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N. LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES OTHER THAN VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS	0	2	3					
2 PROFESSIONALS	0	0	0					
3 TECHNICIANS	0	0	0					
4 SALES WORKERS	0	0	1					
5 OFFICE AND CLERICAL	0	0	0					
6 CRAFT WORKERS (SKILLED)	0	0	0					
7 OPERATIVES (SEMI-SKILLED)	0	0	0					
8 LABORERS (UNSKILLED)	0	0	2					
9 SERVICE WORKERS	0	0	0					
10 TOTAL				0	0	0	3	142

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
600	468

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No.: 1293-0005
Expires: June 30, 2005

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 220
Lanham, Maryland 20703-0220

ATTN: Human Resources/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF REPORT (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Print items preprinted above. ADD Company Contact Information below.)

COMPANY No. 0729087	TWELVE MONTH PERIOD ENDING: 9/27/2006
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY: Morristown	COUNTY: Morris / STATE: NJ / ZIP CODE: 07962
NAME OF COMPANY CONTACT Annette Salvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411 annette.salvaggio@us.schindler.com
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 743 Mcgregor Court
CITY: Boise	COUNTY: Ada / STATE: ID / ZIP CODE: 83705
NAICS: 3544	DUNS: 09-480-9993
EMPLOYER ID: 34-1270056 (IRS TAX No.)	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S, ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	NUMBER OF EMPLOYEES: VIETNAM ERA VETERANS (M)	NUMBER OF EMPLOYEES: OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	NEW HIRES (PREVIOUS 12 MONTHS): VIETNAM ERA VETERANS (P)	NEW HIRES (PREVIOUS 12 MONTHS): RECENTLY SEPARATED VETERANS (Q)	NEW HIRES (PREVIOUS 12 MONTHS): OTHER PROTECTED VETERANS (R)	NEW HIRES (PREVIOUS 12 MONTHS): TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
1. EXECUTIVE/SENIOR LEVEL OFFICIALS AND MANAGERS	0	0	0					
2. FIRST/MID LEVEL OFFICIALS AND MANAGERS	0	0	0					
3. TECHNICIANS	0	0	0					
4. SALES WORKERS	0	0	0					
5. OFFICE AND CLERICAL	0	0	0					
6. CRAFT WORKERS (SKILLED)	0	0	0					
7. OPERATIVES (SEMI-SKILLED)	0	0	0					
8. LABORERS (UNSKILLED)	0	0	0					
9. SERVICE WORKERS	0	0	0					
10. TOTAL	0	0	0	0	0	0	0	3

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
30	23

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2009

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 5 (MSC)

ATTN: Human Resource & EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. Add Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/27/2006	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Salvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411 annette.salvaggio@us.schindler.com	
NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 650 Tennessee Avenue	
CITY Meraux	COUNTY Jefferson	STATE LA	ZIP CODE 70123
NAICS 8534	DUNS 09-480-9993	EMPLOYER ID (IRS TAX No.) 34-1270058	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBERS OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS J, M, AND N. LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (J)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (OTHER THAN SPECIAL DISABLED VETERANS AND OTHER VETERANS) (S)
1 OFFICIALS AND MANAGERS	0	0	0					
2 PROFESSIONALS	0	0	0					
3 TECHNICIANS	0	0	0					
4 SALES WORKERS	0	0	1					
5 OFFICE AND CLERICAL	0	0	0					
6 CRAFT WORKERS (SKILLED)	0	1	0					
7 OPERATIVES (SEMI-SKILLED)	0	0	0					
8 LABORERS (UNSKILLED)	0	0	1					
9 SERVICE WORKERS	0	0	0					
10 TOTAL	0	1	2	0	0	0	0	47

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
165	150

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 6 (MSC)

ATTN: Human Resources EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No. 072687	TWELVE MONTH PERIOD ENDING 9/27/2006
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY Morristown	COUNTY Morris / STATE NJ / ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Salvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411 annette.salvaggio@us.schindler.com
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 13800 NW 2nd St Suite 140
CITY Sunrise	COUNTY Broward / STATE FL / ZIP CODE 33020
NAICS 3435 / DUNS	EMPLOYER ID (IRS TAX No.) 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN I, M, AND N. LINES 1-7. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 6HV, AND COLUMNS I, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (I)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (COL O + COL P) AND NEW VETERANS (S)
1 EXECUTIVE/SR. MANAGEMENT	0	1	4	0	0	0	0	0
2 PROFESSIONALS	0	0	0	0	0	0	0	0
3 TECHNICIANS	0	0	0	0	0	0	0	0
4 SALES WORKERS	0	1	0	0	0	0	0	0
5 OFFICE/CLERICAL	0	0	0	0	0	0	0	0
6 CRAFT WORKERS (SKILLED)	0	0	0	0	0	0	0	0
6A OPERATIVES (SEMI-SKILLED)	0	0	0	0	0	0	0	0
6B LABORERS (UNSKILLED)	0	0	0	0	0	0	0	0
6C SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL	0	2	4	0	0	0	1	1

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
501	455

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Upham, Maryland 20903-0726

TYPE OF REPORTING ORGANIZATION (Check one or both as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Locations
- [x] Multiple Establishment State Consolidated (specify number of locations) 5 (MSC)

AEEO: Human Resource Dept

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above AEEO Company Contact Information Below)

COMPANY No. 072687	TWELVE MONTH PERIOD ENDING 9/27/2006
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY Morristown	COUNTY Morris / STATE NJ / ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411 annette.selvaggio@us.schindler.com
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 840 North Lenola Road
CITY Moorestown	COUNTY Burlington / STATE NJ / ZIP CODE 19046
NAICS 3534 / DUNS	EMPLOYER ID (IRS TAX No.) 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT SELF-PERMANENT EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS E, M, AND N. ENTRIES FOR DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS T, M, N, AND Q, LINE 10, ARE NOT REQUIRED. SHADED AREAS ARE VOLUNTARY FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (E)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES WITH VETERANS AND NON-VETERANS (S)
1 EXECUTIVE AND SENIOR LEVEL OFFICIALS AND MANAGERS	0	1	1					
2 FIRST/MID LEVEL OFFICIALS AND MANAGERS	0	0	0					
3 PROFESSIONALS	0	0	0					
4 TECHNICIANS	0	0	0					
5 SALES AND SERVICE	0	0	0					
6 ADMINISTRATIVE SUPPORT (OFFICE)	0	0	0					
7 CRAFTSMEN (SKILLED)	0	0	0					
8 OPERATIVES (SEMI-SKILLED)	0	0	0					
9 LABORERS (UNSKILLED)	0	0	0					
10 TOTAL	0	1	1	0	0	0	1	25

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
360	290

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN/COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 770
Lanham, Maryland 20703-0770

TYPE OF REPORTING ORGANIZATION (Check one or both as applicable)	TYPE OF FORM (Check only one)
☐ Prime Contractor ☒ Subcontractor	☑ Single Establishment ☐ Multiple Establishment Headquarters ☐ Multiple Establishment Hiring Location ☐ Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

e.g. EIN - Human Resource Dept. Department

COMPANY IDENTIFICATION INFORMATION (Must items prepared above. ADD Company Contact Information Below.)

COMPANY #: 0729687	EWEVET MONTH/PERIOD ENDING: 8/27/2006
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road
CITY: Morristown	COUNTY: Morris / STATE: NJ / ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Salvatore	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.salvatore@us.schindler.com
NAME OF HIRING LOCATION: Elevator Products Corporation	ADDRESS (NUMBER AND STREET): 100 Demarest Drive
CITY: Wayne	COUNTY: Essex / STATE: NJ / ZIP CODE: 07470
NAICS: 3534	DUNS: 09-430-9993 / EMPLOYER ID (IRS TAX No.): 94-1273096

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

IN PART I, REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES AND TO BE ENTERED IN COLUMNS (A), (B) AND (C). DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS (D), (E), (F), (G) AND (H). ENTRIES IN COLUMNS C, F, G, H, I, J, K, L, M, N, O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND O, LINE 10 (JOB CATEGORY TOTALS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (A)	NUMBER OF EMPLOYEES: OTHER PROTECTED VETERANS (B)	NUMBER OF EMPLOYEES: ALL OTHERS (C)	NEW HIRES (PRECEDING 12 MONTHS): SPECIAL DISABLED VETERANS (D)	NEW HIRES (PRECEDING 12 MONTHS): OTHER PROTECTED VETERANS (E)	NEW HIRES (PRECEDING 12 MONTHS): ALL OTHERS (F)	NEW HIRES (PRECEDING 12 MONTHS): TOTAL NEW HIRES (SUM OF D, E, AND F) (G)
1 EXECUTIVE/SENIOR LEVEL OFFICIALS AND MANAGERS	0	0	0				
2 PROFESSIONALS	0	0	0				
3 TECHNICIANS	0	0	0				
4 SALES WORKERS	0	0	0				
5 ADMINISTRATIVE SUPPORT WORKERS	0	0	0				
6 CRAFT WORKERS (SKILLED)	0	0	0				
7 OPERATIVES (SEMI-SKILLED)	0	0	0				
8 LABORERS (UNSKILLED)	0	0	0				
9 SERVICE WORKERS	0	0	0				
10 TOTAL				0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
46	8

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB No. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to the collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Jackson, Mississippi 39205-0726

ATTN: Human Resource EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both as applicable)

- [x] Federal Contractor
- [x] Subcontractor

TYPE OF REPORT (Check only one)

- [ ] Single Establishment
- [x] Multiple Establishment, Headquarters
- [ ] Multiple Establishment, Hiring Location
- [ ] Multiple Establishment, Non-Consolidated (specify additional reasons): [ ] (MNC)

COMPANY IDENTIFICATION INFORMATION (Omit items pertinent to above VETS Compliance Contact Information Section)

COMPANY No. 07-3068	TAXPAYER IDENTIFICATION NUMBER: 06-1333456
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY: Morristown	COUNTY: Morris STATE: NJ ZIP CODE: 07960
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973) 397-6431 annette.selvaggio@us.schindler.com
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY: Morristown	COUNTY: Morris STATE: NJ ZIP CODE: 07960
NAICS: 3534 DUNS: 09-450-9093	EMPLOYER ID: 06-1333456 (SS-TAX-ID)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL VETERANS NEWLY HIRED AND NEW EMPLOYEES ACTUALLY ON PAYROLL AS OF THE END OF THE PAY PERIOD YOU SELECT FOR REPORTING DURING THE REPORTING PERIOD. ALL VETERANS ARE TO BE REPORTED IN EVERY HIRING SEASON. ITEMS 1 THROUGH 6 ARE TO BE COMPLETED ONCE EACH REPORTING PERIOD. SEE INSTRUCTIONS FOR DEFINITIONS OF JOB CATEGORIES AND HIRING SEASONS. IF YOU HAVE NO EMPLOYEES IN A JOB CATEGORY, ENTER A ZERO. DO NOT LEAVE ANY BLANKS. IF YOU DO NOT KNOW THE NUMBER OF DISABLED VETERANS OR VETERANS OF THE OPERATION IRAQI FREEDOM OR OPERATION ENDURING FREEDOM, ENTER "DK". SEE INSTRUCTIONS FOR EXCEPTIONS TO THE MANDATORY DATA ITEMS.

1. JOB CATEGORIES	2. NUMBER OF EMPLOYEES (Previous 12 month period)	3. NUMBER OF EMPLOYEES (Hiring Season)	4. NUMBER OF EMPLOYEES (Current 12 month period)	5. NEW HIRES (Previous 12 month period)	6. NEW HIRES (Hiring Season)	7. NEW HIRES (Current 12 month period)	8. NEW HIRES (Current 12 month period)	9. NEW HIRES (Current 12 month period)
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
1. EXECUTIVE/SENIOR LEVEL OFFICIALS AND MANAGERS	0	2	1	0	0	0	0	0
2. FIRST/MID LEVEL OFFICIALS AND MANAGERS	1	1	0	0	0	0	0	0
3. PROFESSIONALS	2	0	0	0	0	0	0	0
4. TECHNICIANS	2	0	1	0	0	0	0	0
5. SALES WORKERS	0	1	0	0	0	0	0	0
6. ADMINISTRATIVE SUPPORT WORKERS	0	0	0	0	0	0	0	0
7. CRAFT WORKERS	2	0	0	0	0	0	0	0
8. OPERATIVES (SEMI-SKILLED)	0	0	0	0	0	0	0	0
9. LABORERS (UNSKILLED)	0	0	0	0	0	0	0	0
10. TOTAL	5	4	1	0	0	0	0	0

Report the total number of your employees, as of the same date, in the period covered by this report.

Maximum Number: 12 Minimum Number: 5

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

Persons are not required to respond to a collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 326
Canton, Maryland 21703-0326

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check all that apply)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Hiring Location
- [x] Multiple Establishment Single Consolidated (specify number of locations: 4 (MSC)

ATTN: Human Resource EEO Department

COMPANY IDENTIFICATION INFORMATION (Must be completed. See VETS Contact Information Below.)

COMPANY No: 072965	TWELVE MONTH PERIOD ENDING: 9/27/2006
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road
CITY: Morristown	COUNTY: Morris STATE: NJ ZIP CODE: 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973) 397-6471 annette.selvaggio@us.schindler.com
NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 840 North Lenola Road
CITY: Moorestown	COUNTY: Burlington STATE: NJ ZIP CODE: 08057
NAICS: 3534	DUNS: 09-450-8953 EMPLOYER ID: 34-1270350 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES REPORTED IN EACH JOB CATEGORY AND ON NEW HIRES ARE TO BE ENTERED ON LINES 1 THROUGH 10 FOR ALL ENTRIES IN COLUMNS A THROUGH E. FOR EACH LINE 1 THROUGH 10, AND COLUMNS I, M AND Q (USAS STANDARD) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE IN THE DETACHABLE INSTRUCTION PAGE.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	(A) DISABLED VETERANS	(B) OTHER PROTECTED VETERANS	(C) ARMED FORCES SERVICE MEDAL VETERANS	(D) DISABLED VETERANS	(E) OTHER PROTECTED VETERANS	(F) RECENTLY SEPARATED VETERANS	(G) OTHER QUALIFIED VETERANS	(H) ALL OTHERS
1. EXECUTIVE AND SENIOR LEVEL OFFICIALS AND MANAGERS	0	0	0					
2. PROFESSIONALS	0	0	0					
3. TECHNICIANS	0	0	0					
4. SALES WORKERS	0	0	0					
5. ADMINISTRATIVE SUPPORT WORKERS	0	0	0					
6. CRAFT WORKERS (SKILLED)	0	0	0					
7. OPERATIVES (SEMI-SKILLED)	0	0	0					
8. LABORERS (UNSKILLED)	0	0	0					
9. SERVICE WORKERS	0	0	0					
10. TOTAL	0	0	0	0	0	0	0	0

Report the approximate overall maximum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
170	160

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2018

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 529
Fort Sam Houston, TX 78234-0529

To whom are you required to respond to this collection of information unless it displays a valid OMB control number

TYPE OF REPORT (SELECT ONE)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment Reporting Location
- [x] Multiple Establishment Single Consolidated report by number at headquarters (MSC)

TYPE OF REPORTING CLASSIFICATION (Check one box)

- [ ] Prime Contractor
- [x] Subcontractor

ATTN: Human Resource HR Department

COMPANY IDENTIFICATION INFORMATION (Address to which report should be mailed if different than below)

COMPANY No.	0726587	FEDERAL EMPLOYER ID (FEIN)	13-5358352
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY Morristown	COUNTY Morris	STATE NJ	ZIP CODE 07962
NAME OF COMPANY CONTACT Annette Sevaggio		TELEPHONE AND EMAIL FOR CONTACT (973) 397-6477 annette.sevaggio@us.schindler.com	
NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 2150 W Sunset Road	
CITY Phoenix	COUNTY Maricopa	STATE AZ	ZIP CODE 85284
NAICS 3534	DUNS 004809950	EMPLOYER ID (FEIN) 34-1273436	

EMPLOYEE DATA AND VETERAN HIRING REQUIREMENTS

DURING THE PREVIOUS FULL TIME EMPLOYEE HIRING SEASON, WHICH WAS USED TO REPORT VETERAN HIRING DATA ON THE LAST VETS-100 REPORT SUBMITTED LAST YEAR, DID YOU HAVE ANY NEW HIRES? IF YOU ANSWER "NO" TO THIS QUESTION, YOU ARE NOT REQUIRED TO COMPLETE THE REMAINDER OF THIS REPORT. IF YOU ANSWER "YES" TO THIS QUESTION, YOU ARE REQUIRED TO COMPLETE THE REMAINDER OF THIS REPORT.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NUMBER OF NEW HIRES DURING REPORTING PERIOD					
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
Executive/Senior Level Officials and Managers	0		0						
First/Mid-Level Officials and Managers	0		0						
Professionals	2		0						
Technicians	0		0						
Sales Workers									
Administrative Support Workers									
Craft Workers									
Operatives	0		0						
Laborers and Helpers	0		0						
Service Workers	0		0						
TOTAL	2		0						

Report the total number of new hires in each of the categories listed above who were hired during the reporting period.

Male (Gender Neutral) Female (Gender Neutral)

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS EMPLOYMENT

OMB No. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)

- [x] Prime Contractor
- [x] Subcontractor

TYPE OF FORM (Check only one)

- [ ] Single Establishment
- [ ] Multiple Establishment Headquarters
- [ ] Multiple Establishment-Hiring Location
- [x] Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING: 9/27/2006	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411 annette.selvaggio@us.schindler.com	

NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 3168 South 108th East Avenue	
CITY: Tulsa	COUNTY: Tulsa	STATE: OK	ZIP CODE: 74146

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID: 34-1270056 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1	0	0	0	0	0	0	0	0
PROFESSIONALS 2	0	0	0	0	0	0	0	0
TECHNICIANS 3	0	0	0	0	0	0	0	0
SALES WORKERS 4	0	0	0	0	0	0	0	0
OFFICE AND CLERICAL 5	0	0	0	0	0	0	0	0
CRAFT WORKERS (SKILLED) 6	0	0	0	0	0	0	0	0
OPERATIVE (SEMI-SKILLED) 7	0	0	0	0	0	0	0	2
LABORERS (UNSKILLED) 8	0	0	0	0	0	0	0	1
SERVICE WORKERS 9	0	0	0	0	0	0	0	0
TOTAL 10	0	0	1	0	0	0	0	10

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
32	27

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 2 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No: 0729687	TWELVE MONTH PERIOD ENDING: 9/27/2006		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		

NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 5100 Poplar Avenue		
CITY: Memphis	COUNTY: Shelby	STATE: TN	ZIP CODE: 38137

NAICS: 3435	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
		SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS	1	0	0	0	0	0	0	0	0
PROFESSIONALS	2	0	0	0	0	0	0	0	0
TECHNICIANS	3	0	0	0	0	0	0	0	0
SALES WORKERS	4	0	0	1	0	0	0	0	0
OFFICE AND CLERICAL	5	0	0	0	0	0	0	0	0
CRAFT WORKERS (SKILLED)	6	0	0	0	0	0	0	0	0
OPERATIVE (SEMI-SKILLED)	7	0	0	0	0	0	0	0	0
LABORERS (UNSKILLED)	8	0	0	0	0	0	0	0	0
SERVICE WORKERS	9	0	0	0	0	0	0	0	0
TOTAL	10	0	0	1	0	0	0	1	9

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
38	33

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 3 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No. 072668/	TWELVE MONTH PERIOD ENDING: 9/27/2006		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		
NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 8801 Park Central Drive, Suite 100		
CITY: Richmond	COUNTY: Henrico	STATE: VA	ZIP CODE: 23228
NAICS: 3534	DUNS:	EMPLOYER ID (IRS TAX No.): 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS	1	0	1	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
PROFESSIONALS	2	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TECHNICIANS	3	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SALES WORKERS	4	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OFFICE AND CLERICAL	5	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
CRAFT WORKERS (SKILLED)	6	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OPERATIVE (SEMI-SKILLED)	7	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
LABORERS (UNSKILLED)	8	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SERVICE WORKERS	9	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TOTAL	10	[redacted]	[redacted]	0	0	0	[redacted]	1	21

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
62	45

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 2 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/27/2006	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com	

NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 1714 7th Avenue	
CITY: Charleston	COUNTY: Kanawha	STATE: WV	ZIP CODE: 25312

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1	0	0	0	0	0	0	0	0
PROFESSIONALS 2	0	0	0	0	0	0	0	0
TECHNICIANS 3	0	0	0	0	0	0	0	0
SALES WORKERS 4	0	0	0	0	0	0	0	0
OFFICE AND CLERICAL 5	0	0	0	0	0	0	0	0
CRAFT WORKERS (SKILLED) 6	0	0	0	0	0	0	0	0
OPERATIVE (SEMI-SKILLED) 7	0	0	0	0	0	0	0	2
LABORERS (UNSKILLED) 8	0	0	0	0	0	0	0	0
SERVICE WORKERS 9	0	0	0	0	0	0	0	0
TOTAL 10	0	0	0	0	0	0	0	5

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
13	9

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 3 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No: 0729687		TWELVE MONTH PERIOD ENDING: 9/27/2006	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (09)27-6411 annette.selvaggio@us.schindler.com		
NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 895 Blue Gantian Road	
CITY: Eagan	COUNTY: Dakota	STATE: MN	ZIP CODE: 55121
NAICS: 3534	DUNS: 09-480-9983	EMPLOYER ID (IRS TAX No.): 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
		SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS	1	0	1	0	0	0	0	0	0
PROFESSIONALS	2	0	0	0	0	0	0	0	0
TECHNICIANS	3	0	0	0	0	0	0	0	0
SALES WORKERS	4	0	0	0	0	0	0	0	0
OFFICE AND CLERICAL	5	0	0	0	0	0	0	0	3
CRAFT WORKERS (SKILLED)	6	0	0	0	0	0	0	0	6
OPERATIVE (SEMI-SKILLED)	7	0	0	0	0	0	0	0	10
LABORERS (UNSKILLED)	8	0	0	0	0	0	0	0	8
SERVICE WORKERS	9	0	0	0	0	0	0	0	0
TOTAL	10	0	1	0	0	0	0	0	27

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
165	151

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/E.E.O Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No: 0729687	TWELVE MONTH PERIOD ENDING: 9/27/2008		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		

NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 15413 No 95th Street		
CITY: Redmond	COUNTY: King	STATE: WA	ZIP CODE: 98052

NAICS: 3534	DUNS:	EMPLOYER ID (IRS TAX No.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON VETERANS (S)
OFFICIALS AND MANAGERS 1	0	0	0	0	0	0	0	0
PROFESSIONALS 2	0	0	0	0	0	0	0	0
TECHNICIANS 3	0	0	0	0	0	0	0	0
SALES WORKERS 4	0	0	0	0	0	0	0	3
OFFICE AND CLERICAL 5	0	0	0	0	0	0	0	2
CRAFT WORKERS (SKILLED) 6	0	0	0	0	0	0	0	2
OPERATIVE (SEMI-SKILLED) 7	0	0	0	0	0	0	0	0
LABORERS (UNSKILLED) 8	0	0	0	0	0	0	0	2
SERVICE WORKERS 9	0	0	0	0	0	0	0	0
TOTAL 10	0	0	0	0	0	0	0	16

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
109	92

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 2 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No. 0729687	TWELVE MONTH PERIOD ENDING: 9/27/2008		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		
NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): W138 N4863 Campbell Drive		
CITY: Menomee Falls	COUNTY: Waukesha	STATE: WI	ZIP CODE: 53051
NAICS: 3534	DUNS:	EMPLOYER ID (IRS TAX No.): 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N, AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
1 OFFICIALS AND MANAGERS	0	0	1	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
2 PROFESSIONALS	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
3 TECHNICIANS	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
4 SALES WORKERS	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
5 OFFICE AND CLERICAL	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
6 CRAFT WORKERS (SKILLED)	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
7 OPERATIVE (SEMI-SKILLED)	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
8 LABORERS (UNSKILLED)	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
9 SERVICE WORKERS	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
10 TOTAL	[redacted]	[redacted]	[redacted]	0	0	[redacted]	0	20

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
124	96

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 3 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above ADD Company Contact Information Below)

COMPANY No. 0728687	TWELVE MONTH PERIOD ENDING 9/27/2006		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT Annette Salvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411 annette.salvaggio@us.schindler.com		

NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 1200 Indian Creek Court		
CITY: Beltsville	COUNTY: Price Georges	STATE: MD	ZIP CODE: 20705

NAICS: 3534	DUNS: 09-480-9093	EMPLOYER ID (IRS TAX No.) 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS	1	1	0	0	0	0	0	[illegible]
2 PROFESSIONALS	0	0	0	0	0	0	0	0
3 TECHNICIANS	0	0	0	0	0	0	0	0
4 SALES WORKERS	1	2	1	0	0	0	0	5
5 OFFICE AND CLERICAL	0	0	0	0	0	0	0	1
6 CRAFT WORKERS (SKILLED)	0	2	0	0	0	0	0	77
7 OPERATIVE (SEMI-SKILLED)	0	0	0	0	0	0	0	43
8 LABORERS (UNSKILLED)	0	0	0	0	0	0	0	52
9 SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL	[illegible]	5	[illegible]	1	0	0	1	180

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
521	410

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Latham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 5 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No: 0729687		TWELVE MONTH PERIOD ENDING: 9/27/2006	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown		COUNTY: Morris	STATE: NJ ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com	
NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): Livonia Corporate Center Bldg 5	
CITY: Livonia		COUNTY: Wayne	STATE: MI ZIP CODE: 48150
NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1	0	1	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
PROFESSIONALS 2	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TECHNICIANS 3	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SALES WORKERS 4	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OFFICE AND CLERICAL 5	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
CRAFT WORKERS (SKILLED) 6	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OPERATIVE (SEMI-SKILLED) 7	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
LABORERS (UNSKILLED) 8	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SERVICE WORKERS 9	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TOTAL 10	[redacted]	[redacted]	[redacted]	0	0	[redacted]	0	34

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
197	148

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETE REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 2 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No. 0729687	TWELVE MONTH PERIOD ENDING 9/27/2006		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: 0- annette.selvaggio@us.schindler.com		
NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 23 Walpole Park South Drive		
CITY: Walpole	COUNTY: Norfolk	STATE: MA	ZIP CODE: 02081
NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
OFFICIALS AND MANAGERS 1	0	0	0	0	0	0	0	0
PROFESSIONALS 2	0	0	0	0	0	0	0	0
TECHNICIANS 3	0	0	0	0	0	0	0	0
SALES WORKERS 4	0	0	0	0	0	0	0	0
OFFICE AND CLERICAL 5	0	0	0	0	0	0	0	1
CRAFT WORKERS (SKILLED) 6	0	0	0	0	0	0	0	4
OPERATIVE (SEMI-SKILLED) 7	0	0	0	0	0	0	0	5
LABORERS (UNSKILLED) 8	0	0	0	0	0	0	0	1
SERVICE WORKERS 9	0	0	0	0	0	0	0	12
TOTAL 10	0	0	0	0	0	0	0	23

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
117	95

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 2 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/27/2006	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown		COUNTY: Morris	STATE: NJ ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com	
NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 3640 Market Street	
CITY: St Louis		COUNTY: St Louis City	STATE: MO ZIP CODE: 63110
NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (COL. O THROUGH R) AND NON-VETERANS (S)
1. OFFICIALS AND MANAGERS	0	0	1	0	0	0	0	10
2. PROFESSIONALS	0	0	0	0	0	0	0	0
3. TECHNICIANS	0	0	0	0	0	0	0	0
4. SALES WORKERS	0	0	0	0	0	0	0	0
5. OFFICE AND CLERICAL	0	0	0	0	0	0	0	1
6. CRAFT WORKERS (SKILLED)	0	0	0	0	0	0	0	4
7. OPERATIVE (SEMI-SKILLED)	0	0	0	0	0	0	0	7
8. LABORERS (UNSKILLED)	0	0	0	0	0	0	0	3
9. SERVICE WORKERS	0	0	0	0	0	0	0	0
10. TOTAL	0	0	1	0	0	0	0	15

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
119	105

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No: 0729687	TWELVE MONTH PERIOD ENDING: 9/27/2006		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		

NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 203 Concord Street		
CITY: Pawtucket	COUNTY: Providence	STATE: RI	ZIP CODE: 02860

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON VETERANS (S)
OFFICIALS AND MANAGERS 1	0	0	0	0	0	0	0	0
PROFESSIONALS 2	0	0	0	0	0	0	0	0
TECHNICIANS 3	0	0	0	0	0	0	0	0
SALES WORKERS 4	0	0	0	0	0	0	0	0
OFFICE AND CLERICAL 5	0	0	0	0	0	0	0	0
CRAFT WORKERS (SKILLED) 6	0	0	0	0	0	0	0	0
OPERATIVE (SEMI-SKILLED) 7	0	0	0	0	0	0	0	0
LABORERS (UNSKILLED) 8	0	0	0	0	0	0	0	0
SERVICE WORKERS 9	0	0	0	0	0	0	0	0
TOTAL 10	0	0	0	0	0	0	0	4

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
18	13

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor ☑ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☑ Multiple Establishment-State Consolidated (specify number of locations) 5 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No: 0729687		TWELVE MONTH PERIOD ENDING: 9/27/2006	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com	

NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 230 Bilmar Drive	
CITY: Pittsburgh	COUNTY: Allegheny	STATE: PA	ZIP CODE:

NAICS: 3534	DUNS:	EMPLOYER ID: 34-1270058 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
		SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON VETERANS (S)
OFFICIALS AND MANAGERS	1	1	2	0	0	0	0	0	1
PROFESSIONALS	2	0	0	0	0	0	0	0	0
TECHNICIANS	3	0	0	0	0	0	0	0	0
SALES WORKERS	4	0	0	0	0	0	0	0	0
OFFICE AND CLERICAL	5	0	0	0	0	0	0	0	1
CRAFT WORKERS (SKILLED)	6	0	2	0	0	0	0	0	25
OPERATIVE (SEMI-SKILLED)	7	0	0	0	0	0	0	0	17
LABORERS (UNSKILLED)	8	0	0	0	0	0	0	0	3
SERVICE WORKERS	9	0	0	0	0	0	0	0	0
TOTAL	10	1	2	0	0	0	0	0	47

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
231	200

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 2 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No: 0729887		TWELVE MONTH PERIOD ENDING: 9/27/2006	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		

NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 6265 South Valley View Blvd	
CITY: Las Vegas	COUNTY: Clark	STATE: NV	ZIP CODE:

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID: 34-1270056 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
1 OFFICIALS AND MANAGERS	0	1	0	0	0	0	0	1
2 PROFESSIONALS	0	0	0	0	0	0	0	0
3 TECHNICIANS	0	0	0	0	0	0	0	0
4 SALES WORKERS	0	0	0	0	0	0	0	0
5 OFFICE AND CLERICAL	0	0	0	0	0	0	0	1
6 CRAFT WORKERS (SKILLED)	0	0	0	0	0	0	0	12
7 OPERATIVE (SEMI-SKILLED)	0	0	0	0	0	0	0	7
8 LABORERS (UNSKILLED)	0	0	0	0	0	0	0	11
9 SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL	0	1	0	0	0	0	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
64	35

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: **Human Resource/EEO Department**

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☐ Prime Contractor	☑ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☐ Multiple Establishment-State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No. 0729687	TWELVE MONTH PERIOD ENDING: 9/27/2006		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		
NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 6310 West Howard Street		
CITY: Niles	COUNTY: Cook	STATE: IL	ZIP CODE: 60714
NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON VETERANS (S)
OFFICIALS AND MANAGERS 1	0	1	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
PROFESSIONALS 2	0	1	2	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TECHNICIANS 3	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SALES WORKERS 4	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OFFICE AND CLERICAL 5	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
CRAFT WORKERS (SKILLED) 6	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OPERATIVE (SEMI-SKILLED) 7	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
LABORERS (UNSKILLED) 8	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SERVICE WORKERS 9	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TOTAL 10	[redacted]	[redacted]	[redacted]	0	0	[redacted]	2	13

Report the total maximum and minimum number of permanent employees during the period covered by this report

Maximum Number	Minimum Number
102	98

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

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VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 4 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No: 0729687	TWELVE MONTH PERIOD ENDING: 9/27/2006		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		
NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): Coffey Creek Intnl Business Center		
CITY: Charlotte	COUNTY: Mecklenburg	STATE: NC	ZIP CODE: 28217
NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID: 34-1270056 (IRS TAX No.)	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON VETERANS (S)
1 OFFICIALS AND MANAGERS	0	2	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2 PROFESSIONALS	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
3 TECHNICIANS	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4 SALES WORKERS	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
5 OFFICE AND CLERICAL	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
6 CRAFT WORKERS (SKILLED)	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
7 OPERATIVE (SEMI-SKILLED)	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
8 LABORERS (UNSKILLED)	0	0	2	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
9 SERVICE WORKERS	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
10 TOTAL	0	[illegible]	[illegible]	0	0	[illegible]	0	25

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
171	150

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 3 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No: 0729687	TWELVE MONTH PERIOD ENDING: 9/27/2006		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		
NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 2325 Executive Drive		
CITY: Indianapolis	COUNTY: Marion	STATE: IN	ZIP CODE: 46241

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

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JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1	0	0	0	0	0	0	0	0
PROFESSIONALS 2	0	0	0	0	0	0	0	0
TECHNICIANS 3	0	0	0	0	0	0	0	0
SALES WORKERS 4	0	0	0	0	0	0	0	0
OFFICE AND CLERICAL 5	0	0	0	0	0	0	0	0
CRAFT WORKERS (SKILLED) 6	0	0	1	0	0	0	0	6
OPERATIVE (SEMI-SKILLED) 7	0	0	0	0	0	0	0	11
LABORERS (UNSKILLED) 8	0	0	0	0	0	0	0	3
SERVICE WORKERS 9	0	0	0	0	0	0	0	0
TOTAL 10	0	0	1	0	0	0	1	20

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
80	66

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

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VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 0 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No: 0729687	TWELVE MONTH PERIOD ENDING: 9/27/2006		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		

NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 1037 Elmwood Avenue		
CITY: Columbia	COUNTY: Richland	STATE: SC	ZIP CODE: 29201

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID: 34-1270056 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES OTHER VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS	0	0	0	0	0	0	0	0
2 PROFESSIONALS	0	0	0	0	0	0	0	0
3 TECHNICIANS	0	0	0	0	0	0	0	0
4 SALES WORKERS	0	0	0	0	0	0	0	0
5 OFFICE AND CLERICAL	0	0	0	0	0	0	0	0
6 CRAFT WORKERS (SKILLED)	0	0	0	0	0	0	0	0
7 OPERATIVES (SEMI-SKILLED)	0	0	0	0	0	0	0	0
8 LABORERS (UNSKILLED)	0	0	0	0	0	0	0	0
9 SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL	0	0	0	0	0	0	0	1

Report the total maximum and minimum number of permanent employees during the period covered by this report

Maximum Number	Minimum Number
37	32

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 11 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No. 0729687	TWELVE MONTH PERIOD ENDING 9/27/2006		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		

NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 18013 Cleveland Parkway		
CITY: Cleveland	COUNTY: Cuyahoga	STATE: OH	ZIP CODE: 44135

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID: 34-1270056 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
		SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
OFFICIALS AND MANAGERS	1	0	0	0	0	0	0	0	1
PROFESSIONALS	2	0	0	0	0	0	0	0	1
TECHNICIANS	3	0	0	0	0	0	0	0	0
SALES WORKERS	4	0	0	0	0	0	0	0	2
OFFICE AND CLERICAL	5	0	0	0	0	0	0	0	0
CRAFT WORKERS (SKILLED)	6	0	0	0	0	0	0	0	16
OPERATIVE (SEMI-SKILLED)	7	0	0	0	0	0	0	0	19
LABORERS (UNSKILLED)	8	0	0	0	0	0	0	0	12
SERVICE WORKERS	9	0	0	0	0	0	0	0	0
TOTAL	10	0	0	0	0	0	0	0	51

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
248	215

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☑ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment Hiring Location
	☐ Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No: 0729687	TWELVE MONTH PERIOD ENDING: 9/27/2008		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		

NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 1530 Timberwolf Drive		
CITY: Holland	COUNTY: Lucas	STATE: OH	ZIP CODE: 43528

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS	0	0	0	0	0	0	0	1
2 PROFESSIONALS	0	2	0	0	0	0	0	2
3 TECHNICIANS	0	0	0	0	0	0	0	0
4 SALES WORKERS	0	0	0	0	0	0	0	0
5 OFFICE AND CLERICAL	0	2	3	0	0	0	0	9
6 CRAFT WORKERS (SKILLED)	0	0	0	0	0	0	0	0
7 OPERATIVES (SEMI-SKILLED)	0	0	0	0	0	0	0	0
8 LABORERS (UNSKILLED)	0	0	0	0	0	0	0	0
9 SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL	0	4	3	0	0	0	1	12

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
123	114

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 3 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No 0729687	TWELVE MONTH PERIOD ENDING 9/27/2008		
NAME OF PARENT COMPANY Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 20 Whippany Road		
CITY Morristown	COUNTY: Morris	STATE NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT (973)397-6411 annette.selvaggio@us.schindler.com		

NAME OF HIRING LOCATION Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET) 853 N Church Court		
CITY Elmhurst	COUNTY: Du Page	STATE IL	ZIP CODE: 60126

NAICS: 3534	DUNS: 09-480-9093	EMPLOYER ID: 34-1270056 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
PROFESSIONALS 2	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TECHNICIANS 3	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SALES WORKERS 4	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OFFICE AND CLERICAL 5	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
CRAFT WORKERS (SKILLED) 6	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OPERATIVES (SEMI-SKILLED) 7	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
LABORERS (UNSKILLED) 8	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SERVICE WORKERS 9	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TOTAL 10	[redacted]	[redacted]	[redacted]	0	0	[redacted]	0	61

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
270	231

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 2 (MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No: 0729687	TWELVE MONTH PERIOD ENDING: 9/27/2006		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		

NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 6600 Highlands Parkway		
CITY: Smyrna	COUNTY: Cobb	STATE: GA	ZIP CODE: 30082

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID: 34-1270056 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
		SPECIAL DISABLED VETERANS (L)	VIETNAM-ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS	1	0	0	0	0	0	0	0	1
PROFESSIONALS	2	0	1	0	0	0	0	0	0
TECHNICIANS	3	0	0	0	0	0	0	0	0
SALES WORKERS	4	0	0	1	0	0	0	0	0
OFFICE AND CLERICAL	5	0	0	0	0	0	0	0	0
CRAFT WORKERS (SKILLED)	6	0	0	0	0	0	0	0	0
OPERATIVE (SEMI-SKILLED)	7	0	0	0	0	0	0	0	5
LABORERS (UNSKILLED)	8	0	0	0	0	0	0	0	0
SERVICE WORKERS	9	0	0	0	0	0	0	0	0
TOTAL	10	0	1	1	0	0	0	0	15

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
155	149

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☑ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☐ Multiple Establishment State Consolidated (specify number of locations) 0 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No: 0729687		TWELVE MONTH PERIOD ENDING 9/27/2006	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown		COUNTY: Morris	STATE: NJ ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com	
NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 125 North Market Street	
CITY: Wichita		COUNTY: Sedgwick	STATE: KS ZIP CODE: 67202
NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
		SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS	1	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
PROFESSIONALS	2	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TECHNICIANS	3	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SALES WORKERS	4	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OFFICE AND CLERICAL	5	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
CRAFT WORKERS (SKILLED)	6	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OPERATIVE (SEMI-SKILLED)	7	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
LABORERS (UNSKILLED)	8	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SERVICE WORKERS	9	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TOTAL	10	[redacted]	[redacted]	[redacted]	0	0	[redacted]	0	0

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
2	2

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

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VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☑ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☐ Multiple Establishment-State Consolidated (specify number of locations) 0 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No: 0729687	TWELVE MONTH PERIOD ENDING 9/21/2006		
NAME OF PARENT COMPANY: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 20 Whippany Road		
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio	TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411 annette.selvaggio@us.schindler.com		

NAME OF HIRING LOCATION: Schindler Elevator Corporation	ADDRESS (NUMBER AND STREET): 609 Industrial Drive		
CITY: Clinton	COUNTY: Sampson	STATE: NC	ZIP CODE: 28328

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

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JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1	0	1	0	0	0	0	0	2
PROFESSIONALS 2	0	2	0	0	0	0	0	0
TECHNICIANS 3	0	0	0	0	0	0	0	0
SALES WORKERS 4	0	0	0	0	0	0	0	0
OFFICE AND CLERICAL 5	0	0	0	0	0	0	0	0
CRAFT WORKERS (SKILLED) 6	0	1	0	0	0	0	0	0
OPERATIVE (SEMI-SKILLED) 7	0	5	1	0	0	0	1	6
LABORERS (UNSKILLED) 8	0	0	0	0	0	0	0	0
SERVICE WORKERS 9	0	0	0	0	0	0	0	0
TOTAL 10	0	9	1	0	0	0	1	8

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
160	149

VETS 100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

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VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment - Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/27/2006	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411	

NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 505 5th Avenue	
CITY: Des Moines	COUNTY: Polk	STATE: IA	ZIP CODE: 50309

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN J, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (J)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
OFFICIALS AND MANAGERS 1	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
PROFESSIONALS 2	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TECHNICIANS 3	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SALES WORKERS 4	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OFFICE AND CLERICAL 5	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
CRAFT WORKERS (SKILLED) 6	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
OPERATIVE (SEMI-SKILLED) 7	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
LABORERS (UNSKILLED) 8	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
SERVICE WORKERS 9	0	0	0	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TOTAL 10	[redacted]	[redacted]	[redacted]	0	0	[redacted]	0	15

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
27	19

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: **Human Resource/EEO Department**

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No: 0729687		TWELVE MONTH PERIOD ENDING 9/27/2008	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411	
NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 124 W Capitol Avenue	
CITY: Little Rock	COUNTY: Pulaski	STATE: AK	ZIP CODE: 77201

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON VETERANS (S)
1 OFFICIALS AND MANAGERS	0	0	0	0	0	0	0	0
2 PROFESSIONALS	0	0	0	0	0	0	0	0
3 TECHNICIANS	0	0	0	0	0	0	0	0
4 SALES WORKERS	0	1	0	0	0	0	0	0
5 OFFICE AND CLERICAL	0	0	0	0	0	0	0	0
6 CRAFT WORKERS (SKILLED)	0	0	0	0	0	0	0	0
7 OPERATIVE (SEMI-SKILLED)	0	0	0	0	0	0	0	2
8 LABORERS (UNSKILLED)	0	0	0	0	0	0	0	0
9 SERVICE WORKERS	0	0	0	0	0	0	0	0
10 TOTAL	0	1	0	0	0	0	0	2

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
19	17

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

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RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment Hiring Location
	☑ Multiple Establishment State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No: 0729687		TWELVE MONTH PERIOD ENDING: 8/27/2006	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411	

NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 6950 West Jefferson Ave., Suite 210	
CITY: Denver	COUNTY: Denver	STATE: CO	ZIP CODE: 80235

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S. LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1	0	0	0	0	0	0	0	0
PROFESSIONALS 2	0	0	0	0	0	0	0	0
TECHNICIANS 3	0	0	0	0	0	0	0	0
SALES WORKERS 4	0	0	0	0	0	0	0	0
OFFICE AND CLERICAL 5	0	0	0	0	0	0	0	0
CRAFT WORKERS (SKILLED) 6	0	1	0	0	0	0	0	0
OPERATIVE (SEMI-SKILLED) 7	0	0	0	0	0	0	0	0
LABORERS (UNSKILLED) 8	0	0	0	0	0	0	0	2
SERVICE WORKERS 9	0	0	0	0	0	0	0	0
TOTAL 10	0	1	0	0	0	0	0	17

Report the total maximum and minimum number of permanent employees during the period covered by this report

Maximum Number	Minimum Number
84	76

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO: 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No: 0729687		TWELVE MONTH PERIOD ENDING: 9/27/2006	
NAME OF PARENT COMPANY: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT: Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT: (973)397-6411	

NAME OF HIRING LOCATION: Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET): 98-723 Kuahao Place	
CITY: Pearl City	COUNTY: Honolulu	STATE: HI	ZIP CODE: 96782

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID (IRS TAX No.): 34-1270056

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L,M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O,P,Q,R, AND S. ENTRIES IN COLUMNS O,P,Q,R, AND S, LINES 1 THROUGH 9, AND COLUMNS L,M,N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
OFFICIALS AND MANAGERS 1	0	0	0	0	0	0	0	0
PROFESSIONALS 2	0	0	0	0	0	0	0	0
TECHNICIANS 3	0	0	0	0	0	0	0	0
SALES WORKERS 4	0	0	0	0	0	0	0	0
OFFICE AND CLERICAL 5	0	0	0	0	0	0	0	1
CRAFT WORKERS (SKILLED) 6	0	0	0	0	0	0	0	2
OPERATIVES (SEMI-SKILLED) 7	0	0	0	0	0	0	0	3
LABORERS (UNSKILLED) 8	0	0	0	0	0	0	0	4
SERVICE WORKERS 9	0	0	0	0	0	0	0	0
TOTAL 10	0	0	0	0	0	0	0	10

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
59	52

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO. 1293-0005
Expires: June 30, 2008

Persons are not required to respond to this collection of information unless it displays a valid OMB number.

RETURN COMPLETED REPORT TO:

U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☑ Prime Contractor	☐ Single Establishment
☑ Subcontractor	☐ Multiple Establishment-Headquarters
	☐ Multiple Establishment-Hiring Location
	☑ Multiple Establishment-State Consolidated (specify number of locations) 1 (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above. ADD Company Contact Information Below)

COMPANY No. 0729687		TWELVE MONTH PERIOD ENDING 9/27/2006	
NAME OF PARENT COMPANY Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 20 Whippany Road	
CITY: Morristown	COUNTY: Morris	STATE: NJ	ZIP CODE: 07962
NAME OF COMPANY CONTACT Annette Selvaggio		TELEPHONE AND EMAIL FOR CONTACT (973)397-6411	
NAME OF HIRING LOCATION Schindler Elevator Corporation		ADDRESS (NUMBER AND STREET) 2716 7th Avenue, S.	
CITY: Birmingham	COUNTY: Jefferson	STATE: AL	ZIP CODE: 35233

NAICS: 3534	DUNS: 09-480-9993	EMPLOYER ID: 34-1270056 (IRS TAX No.)

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS J, K, AND N. LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
	SPECIAL DISABLED VETERANS (J)	VIETNAM-ERA VETERANS (K)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM-ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
1 OFFICIALS AND MANAGERS	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2 PROFESSIONALS	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
3 TECHNICIANS	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4 SALES WORKERS	0	1	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
5 OFFICE AND CLERICAL	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
6 CRAFT WORKERS (SKILLED)	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
7 OPERATIVES (SEMI-SKILLED)	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
8 LABORERS (UNSKILLED)	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
9 SERVICE WORKERS	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
10 TOTAL	[illegible]	[illegible]	[illegible]	0	0	[illegible]	0	20

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number
45	32

Exhibit B to Willens Declaration—
Department of Labor VETS-100 Federal
Contractor Report Form

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO 1293-0005
Expires: November 30, 2004

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 Reporting Office
P.O. Box 726
Lanham, Maryland 20703-0726

ATTN: Human Resource/EEO Department

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☐ Prime Contractor ☐ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☐ Multiple Establishment-State Consolidated (specify number of locations) _____ (MSC)

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No.	TWELVE MONTH PERIOD ENDING: M M D D Y Y Y Y = 2004	
NAME OF PARENT COMPANY:	ADDRESS (NUMBER AND STREET):	
CITY:	COUNTY:	STATE: ZIP CODE:
NAME OF COMPANY CONTACT:	TELEPHONE AND EMAIL FOR CONTACT:	

NAME OF HIRING LOCATION:	ADDRESS (NUMBER AND STREET):	
CITY:	COUNTY:	STATE: ZIP CODE:

NAICS: DUNS: - - EMPLOYER ID (IRS TAX No.): -

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, N AND Q, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL FOR THIS REPORTING CYCLE. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
		SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES (BOTH VETERANS AND NON-VETERANS) (S)
OFFICIALS AND MANAGERS	1								
PROFESSIONALS	2								
TECHNICIANS	3								
SALES WORKERS	4								
OFFICE AND CLERICAL	5								
CRAFT WORKERS (SKILLED)	6								
OPERATIVE (SEMI-SKILLED)	7								
LABORERS (UNSKILLED)	8								
SERVICE WORKERS	9								
TOTAL	10								

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT (VETS-100)

WHO MUST FILE

The Vets-100 report is to be completed by all nonexempt federal contractors and subcontractors with contracts or subcontracts for the furnishing of supplies and services or the use of real or personal property for $25,000 or more. Services include but are not limited to the following services: Utility, construction, transportation, research, insurance, and fund depositary, irrespective of whether the government is the purchaser or seller. The existence of $25,000 or more in federal contracts or subcontracts during a given calendar year establishes the requirement to file a VETS-100 Report during the following calendar year.

WHEN TO FILE

This annual report must be filed no later than September 30. Mail to the address pre-printed on the front of the form.

LEGAL BASIS FOR REPORTING REQUIREMENTS

Title 38, United States Code, Section 4212(d) and Pt. 60-300 require that federal contractors report at least annually the number of existing employees who are: 1) special disabled veterans, 2) veterans of the Vietnam era, and 3) other protected veterans (that is, who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized). For the existing employees, the numbers of veterans within these three groups are to be broken out by job category. New hires are to be reported over a twelve-month reporting period. The total number of veterans in new hires in each of the three groups above is to be reported, along with the total number of newly separated veterans (i.e. hired within twelve months of separation). In addition, over the same twelve-month period, the total number of new hires (both veterans and non-veterans) is required to be reported, along with the maximum and minimum total employment. This reporting is required by hiring location.

HOW TO SUBMIT THE VETS-100 REPORTS

Single establishment employers must file one completed form. All multi-establishment employers, i.e., those doing business at more than one hiring location, must file (A) one form covering the principal or headquarters office; (B) a separate form for each hiring location employing 50 or more persons; and (C) EITHER (i) a separate form for each hiring location employing fewer than 50 persons, OR (ii) consolidated reports that cover hiring locations within one State that have fewer than 50 employees. Each state consolidated report must also list the name and address of the hiring locations covered by the report. Company consolidated reports such as those required by EEO-1 reporting procedures are NOT required for the VETS-100 report. Completed reports for the headquarters location and all other hiring locations for each company should be mailed in one package to the address indicated on the front of the form.

RECORD KEEPING

Employers must keep copies of the completed annual VETS-100 report submitted to EDC for a period of three years.

HOW TO PREPARE THE FORMS

Shaded areas designate optional information. Answers to questions in all other areas of the form are mandatory.

Multi-establishment employers submitting hard copy reports should produce facsimile copies of the headquarters form for reporting data on each location.

Type of Reporting Organization Indicate the type of contractual relationship (prime contractor or subcontractor) that the organization has with the Federal Government. If the organization serves as both a prime contractor and a subcontractor on various federal contracts, check both boxes.

Type of Report If a reporting organization submits only one VETS-100 Report form for a single location, check the Single Establishment box. If the reporting organization submits more than one form, only one form should be checked as Multiple Establishment Headquarters. The remaining forms should be checked as either Multiple Establishment Hiring Location or Multiple Establishment State Consolidated. For state consolidated forms, the number of hiring locations included in that report should be entered in the space provided. For each form, only one box should be checked within this block.

COMPANY IDENTIFICATION INFORMATION

Company Number Do not change the Company Number that is printed on the form. If there are any questions regarding your Company Number, please call the VETS-100 staff at (301) 306-6752 or e-mail HELPDESK@VETS100.COM.

Twelve Month Payroll Ending Enter the end date for the twelve month reporting period used as the basis for filing the VETS-100 Report. To determine this period, select a date in the current year between July 1 and August 31 that represents the end of a payroll period. That payroll period will be the basis for reporting Number of Employees, as described below. Then the twelve-month period preceding the end date of that payroll period will be your twelve-month period covered. This period is the basis for reporting New Hires, as described below. Any federal contractor or subcontractor who has written approval from the Equal Employment Opportunity Commission to use December 31 as the ending date for the EEO-1 Report may also use that date as the ending date for the payroll period selected for the VETS-100 Report.

Name and Address for Single Establishment Employers COMPLETE the identifying information under the Parent Company name and address section. LEAVE BLANK all of the identifying information for the Hiring Location.

Name and Address for Multi-Establishment Employers For parent company headquarters location, COMPLETE the name and address for the parent company headquarters. LEAVE BLANK the name and address of the Hiring Location. For hiring locations of a parent company, COMPLETE the name and address for the Parent Company location. COMPLETE the name and address for the Hiring Location.

NAICS Code, DUNS Number, and Employer ID Number Single Establishment and Multi-Establishment Employers must COMPLETE the NAICS Code, Employer ID Number, and the DUNS number if the contractor has a DUNS number, as described below.

NAICS Code Enter the six (6) digit NAICS Code applicable to the hiring location for which the report is filed. If there is not a separate NAICS Code for the hiring location, enter the NAICS Code for the parent company.

Parent (Headquarters) ID Number (DUNS) If the company or any of its establishments has a Dun and Bradstreet identification number, please enter the nine (9) digit number in the space provided. If there is a specific DUNS Number applicable to the hiring location for which the report is filed, enter that DUNS Number. Otherwise, enter the DUNS number for the parent company.

Employer ID Number (EIN) Enter the nine (9) digit numbers assigned by the I.R.S. to the contractor. If there is a specific EIN applicable to the hiring location for which the report is filed, enter that EIN. Otherwise, enter the EIN for the parent company.

INFORMATION ON EMPLOYEES

Counting Veterans Some veterans will fall into more than one of the protected veteran categories. For example, a veteran may be both a special disabled veteran and a Vietnam era veteran. In such cases the veteran must be counted in each category. Newly separated veterans will be counted in the New Hires section of the VETS-100 Report only. In subsequent years, these veterans will no longer be considered newly separated veterans.

Number of Employees Select any payroll period ending between July 1 and August 31 of the current year. Provide (i) data for permanent full-time and part-time employees who were special disabled veterans, Vietnam era veterans, or other protected veterans employed as of the ending date of the selected payroll period. Do not include employees specifically excluded as indicated in 41 CFR 61-250.2(b)(2). Employees must be counted by veteran status for each of the nine occupational categories (Lines 1-9) in columns L, M, and N. The description of job categories can be found in 41 CFR 61-250.2(b)(3). Blank spaces will be considered zeros.

New Hires Report the number of permanent full-time and part-time employees by veteran status who were hired (both veterans and non-veterans) and who were included in the payroll for the first time during the 12-month period ending between July 1 through August 31 of the current year. The totals in columns O, P, R, and S (Line 10) are required. The total in column Q (Line 10) is optional for 2003 reporting cycle. Enter all applicable numbers, including zeros.

Maximum/Minimum Employees Report the maximum and minimum number of permanent employees on board during the period covered as indicated by 41 CFR 61-250.10(a)(3). Contractors may use any reasonable method for calculating and determining the maximum and minimum number of employees during the reporting period.

DEFINITIONS

Hiring location means an establishment as defined at 41 CFR 61-250.2(b).

Special Disabled Veteran means (i) a veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans' Affairs for a disability (A) rated at 30 percent or more, or (B) rated at 10 or 20 percent in the case of a veteran who has been determined under Section 38 U.S.C. 3106 to have a serious employment handicap; or (ii) a person who was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam era means a person who: (i) served on active duty in the U.S. military, ground, naval or air service for a period of more than 180 days, and who was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty was performed: (A) in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or (B) between August 5, 1964, and May 7, 1975, in all other cases; or (ii) was discharged or released from active duty in the U.S. military, ground, naval or air service for a service-connected disability if any part of such active duty was performed (A) in the Republic of Vietnam between February 28, 1961, and May 7, 1975, or (B) between August 5, 1964, and May 7, 1975, in any other location.

Newly Separated Veteran means any veteran who served on active duty in the U.S. military, ground, naval or air service during the one year period beginning on the date of such veteran's discharge or release from active duty.

Other Protected Veteran means veterans who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized. For those with Internet access, the information required to make the determination is available at http://www.dmdc.osd.mil/projects/vetpro/vet02.htm. A copy of the list also may be obtained by calling (301) 306-6752 and requesting that a copy of the list be mailed to you.

Public reporting burden for this collection is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Department of Labor, Office of Information Management, Room N-1301, 200 Constitution Avenue, NW.
Washington D.C. 20210. All completed VETS-100 Reports should be sent to the address indicated on the front of the form.

PETITIONER'S BRIEF

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No. 10-188

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

SCHINDLER ELEVATOR CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA
ex rel. DANIEL KIRK,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTION PRESENTED

Whether a federal agency's response to a Freedom of Information Act request is a "report . . . or investigation" within the meaning of the False Claims Act public-disclosure bar, 31 U.S.C. § 3730(e)(4).

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

The parties to the proceeding below are as set forth in the caption of the case.

Petitioner Schindler Elevator Corporation is a direct subsidiary of Schindler Enterprises, Inc., which is in turn a subsidiary of Schindler Holding, Inc., a closely held company based in Switzerland. Schindler Elevator Corporation is not a publicly traded company, and no publicly held company owns more than 10% of its stock.

TABLE OF CONTENTS

Page

Question Presented i

Parties to the Proceedings and Corporate Disclosure Statement ii

Table of Contents iii

Table of Authorities v

Opinion Below 1

Jurisdiction 1

Statutory Provisions Involved 1

Preliminary Statement 1

Statement of the Case 3

Summary of Argument 13

Argument 17

I. The Public-Disclosure Bar's Plain Terms Encompass Responses to FOIA Requests 17

A. An Agency's Response to a FOIA Request Comes Within the Ordinary Meanings of "Report" and "Investigation." 18

B. Construing "Report" and "Investigation" in Accordance with their Ordinary Meanings Is Consistent with Congress's Purposes 22

C. The Court of Appeals Incorrectly Applied the *Noscitur a Sociis* Canon to Narrow the Meanings of "Report" and "Investigation" and Deem Those Terms Inapplicable to FOIA Responses 25

D. An Agency's Response to a FOIA Request Constitutes a "Report" or "Investigation" Even under a Narrow Interpretation of Those Terms 30

II. The Drafting History of the False Claims Act Confirms that FOIA Responses Trigger the Public-Disclosure Bar 34

A. Congress Intended to Prohibit Persons Lacking Firsthand Knowledge of Fraud from Bringing a Qui Tam Suit 34

B. Whether the Public-Disclosure Bar Applies Depends on What Information Is Publicly Available and Not on Whether the Government Is "on the Trail" of the Supposed Fraud 39

III. The Second Circuit's Interpretation of the Public-Disclosure Bar Will Have Far-Reaching and Damaging Consequences 45

Conclusion 50

TABLE OF AUTHORITIES

CASES

Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 515 U.S. 687 (1995) 27

BedRoc Ltd., LLC v. United States, 541 U.S. 176 (2004) 18

Chrysler Corp. v. Brown, 441 U.S. 281 (1979) 31

Dukes v. Ralston Purina Co., 127 Ga. App. 696, 194 S.E.2d 630 (Ga. Ct. App. 1972) 19

Dunn v. CFTC, 519 U.S. 465 (1997) 25

Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 541 U.S. 246 (2004) 18, 26

FCC v. AT&T, No. 09-1279, *cert. granted*, ___ U.S. ___, 2010 WL 1623772 (Sept. 28, 2010) 30

Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson, 559 U.S. __, 130 S. Ct. 1396 (2010) ..... passim

Hertz Corp. v. Friend, 559 U.S. __, 130 S. Ct. 1181 (2010) 21

Hughes Aircraft Co. v. United States ex rel. Schumer,
520 U.S. 939 (1997) 17, 38, 47, 49

In re Natural Gas Royalties Qui Tam Litig.,
566 F.3d 956 (10th Cir. 2009) 46

Johnson v. United States,
529 U.S. 694 (2000) 22

Kirk v. Schindler Elevator Corp.,
No. 03 Civ. 8688 (SHS), 2004 WL 1933584
(S.D.N.Y. Aug. 31, 2004) 4

Kirk v. Schindler Elevator Corp.,
49 A.D.3d 300 (N.Y. App. Div. 2008) 4

Lapides v. Bd. of Regents of Univ. Sys. of Ga.,
535 U.S. 613 (2002) 21

Madison Mech., Inc. v. Nat'l Aeronautics & Space Admin.,
NO. CIV.A. 99-2854 (EGS), 2003 WL
1477014 (D.D.C. Mar. 20, 2003) 20

Malinowski v. F.B.I.,
No. 86 Civ. 2239 (JFK), 1987 WL 12826
(S.D.N.Y. June 17, 1987) 21

Met. Life Ins. Co. v. Usery,
426 F. Supp. 150 (D.D.C. 1976) 31

Milner v. Dep't of the Navy,
No. 09-1163, *cert. granted*, ___ U.S. ___,
130 S. Ct. 3505 (2010) 30

Perrin v. United States,
444 U.S. 37 (1979) 19

Reiter v. Sonotone Corp.,
442 U.S. 330 (1979) 28, 29

Russell Motor Car Co. v. United States,
261 U.S. 514 (1923) 26, 29

Sisson v. Ruby,
497 U.S. 358 (1990) 21

United States ex rel. Devlin v. State of Cal.,
84 F.3d 358 (9th Cir. 1996) 35

United States ex rel. Doe v. John Doe Corp.,
960 F.2d 318 (2d Cir. 1992) 35, 38

United States ex rel. Grynberg v. Praxair, Inc.,
389 F.3d 1038 (10th Cir. 2004) 19

United States ex rel. Haight v. Catholic Healthcare West,
445 F.3d 1147 (9th Cir. 2006) 30, 33

United States ex rel. Herbert v. Nat'l Acad. of Sciences,
1992 WL 247587 (D.D.C. Sept. 15, 1992) 45

United States ex rel. Holmes v. Consumer Ins. Grp.,
318 F.3d 1199 (10th Cir. 2003) 18, 37, 44

United States ex rel. Marcus v. Hess,
317 U.S. 537 (1943) 35

United States ex rel. Mikes v. Straus,
274 F.3d 687 (2d Cir. 2001).....10

United States ex rel. Mistick v. Housing Auth. of the City of Pittsburgh,
186 F.3d 376 (3d Cir. 1999).....18, 19, 20, 30

United States ex rel. Ondis v. City of Woonsocket,
587 F.3d 49 (1st Cir. 2009).....19, 38

United States ex rel. Poteet v. Bahler Med., Inc.,
619 F.3d 104 (1st Cir. 2010).....28

United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.,
384 F.3d 168 (5th Cir. 2004).....19

United States ex rel. Springfield Terminal Ry.,
14 F.3d 645 (D.C. Cir. 1994).....35, 37

United States ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Prudential Ins. Co.,
944 F.2d 1149 (3d Cir. 1991).....35, 36

United States v. Findley,
105 F.3d 675 (D.C. Cir. 1997).....36, 38, 39, 45

United States v. Stevens,
559 U.S. __, 130 S. Ct. 1577 (2010).....26

Virginia v. Tennessee,
148 U.S. 503 (1873).....26

Wang v. FMC Corp.,
975 F.2d 1412 (9th Cir. 1992).....36

STATUTES AND REGULATIONS

5 U.S.C. § 552 ..... 8, 20, 30, 31, 32

28 U.S.C. § 1254 1

31 U.S.C. § 1354 ..... 7, 8

31 U.S.C. § 3729 5

31 U.S.C. § 3730 ..... passim

38 U.S.C. § 4212 ..... 3, 4, 6, 7

The Patient Protection and Affordable Care Act, Pub L. No. 111-148, 124 Stat. 119 11

Act of December 23, 1943, 57 Stat. 608, recodified in 31 U.S.C. § 3730(b)(4)(1982) (superseded) 36

41 C.F.R. § 60-250.62 8

41 C.F.R. § 60-250.68 8

48 C.F.R. §§ 22.1310 5

48 C.F.R. § 52.222-37 ..... 5, 7

48 C.F.R. § 52.222-38 7

OTHER AUTHORITIES

132 Cong. Rec. H6474-02 42

132 Cong. Rec. S11238-04 ..... 22, 35, 44

132 Cong. Rec. S9805-01 42

Black's Law Dictionary (6th ed. 1990) 19

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Norman J. Singer, Statutes and Statutory Construction § 47:16 (7th ed. 2007) 26

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Webster's Third New Int'l Dictionary (1971) 19, 20

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-48a) is reported at 601 F.3d 94. The district court's opinion (Pet. App. 49a-87a) is reported at 606 F. Supp. 2d 448.

JURISDICTION

The judgment of the court of appeals was entered on April 6, 2010. On June 24, 2010, Justice Ginsburg extended the time within which to file a petition for a writ of certiorari to and including August 5, 2010. The petition for a writ of certiorari was filed on August 5, 2010, and was granted on September 28, 2010. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory and regulatory provisions are reproduced at Pet. App. 88a-117a.

PRELIMINARY STATEMENT

The False Claims Act precludes private parties from bringing qui tam lawsuits that are based on information publicly disclosed in government "reports" or "investigations," unless the qui tam relator is the original source of the information. Congress enacted this public-disclosure bar to preserve a crucial balance. Although it wanted to encourage whistleblowers—individuals with firsthand knowledge of fraud against the government—to pursue qui tam suits by incentivizing them with substantial rewards, it also sought to prohibit parasitic suits brought by persons whose claims were based on publicly disclosed information.

This is the paradigmatic case that Congress intended to prohibit when it enacted the public-disclosure bar. Respondent Daniel Kirk alleges that Schindler falsely certified compliance with statutory reporting requirements, but he did not, and could not, base these allegations on any firsthand knowledge of Schindler's reporting practices. Instead, Kirk's claims are based on information the government disclosed to Kirk's wife in response to requests she made under the Freedom of Information Act ("FOIA").

The Second Circuit incorrectly held that searches conducted by the government in response to these FOIA requests were not "investigations" and that the government's official notifications of the results of the searches were not "reports." The court of appeals never disputed that FOIA responses fall within the ordinary meanings of these statutory terms. Rather, invoking the canon of *noscitur a sociis*, it narrowly construed the statute to reach only public disclosures showing that the government had engaged in a sustained analysis, such as one intended to expose misconduct, and concluded that FOIA responses are too ministerial to satisfy this test.

This interpretation is inconsistent with both the text and the purpose of the public-disclosure bar. Congress could have written a narrow statute limiting the bar's application in the manner urged by the court of appeals. Instead, it made the bar applicable to information publicly disclosed in any administrative "report" or "investigation." Affording these terms their natural, ordinary meanings is necessary to effectuate Congress's purpose of prohibiting qui tam suits except when the relator has direct, firs-

thand knowledge of the supposed fraud. Under the Second Circuit's ruling, however, *anyone* may bring a qui tam suit to prosecute regulatory infractions he discovered solely through responses to FOIA requests.

Unless that ruling is reversed, opportunistic relators seeking the False Claims Act's extraordinary bounties will deluge government contractors with parasitic lawsuits. In pursuing these windfall gains, relators will displace administrative and statutory enforcement mechanisms put in place by Congress, effectively seizing control of enforcement decisions in matters of which they have no firsthand knowledge. Ultimately, this will raise the government's costs of doing business as contractors withdraw from the market or seek to shift the cost of the anticipated litigation risks. This Court should reverse the court of appeals' decision and give the public-disclosure bar the effect that Congress intended.

STATEMENT OF THE CASE

Schindler manufactures, installs and maintains elevators and escalators in buildings throughout the world, including some buildings owned or operated by the federal government. Respondent Kirk is a Vietnam veteran and former Schindler employee.

Since his voluntary resignation from Schindler in 2003, Kirk has initiated multiple lawsuits and administrative actions against Schindler challenging, among other things, Schindler's compliance with the Vietnam Era Veterans Readjustment Assistance Act ("VEVRAA"), 38 U.S.C. § 4212, and its implementing regulations.

Kirk first sued Schindler for defamation, constructive discharge, breach of contract, and purported ERISA violations. The district court dismissed the ERISA claims with prejudice, and dismissed the remaining claims without prejudice. See *Kirk v. Schindler Elevator Corp.*, No. 03 Civ. 8688 (SHS), 2004 WL 1933584 (S.D.N.Y. Aug. 31, 2004). A separate state-court action that Kirk brought against Schindler alleging tortious interference with business relations, among other claims, was dismissed on summary judgment. See *Kirk v. Schindler Elevator Corp.*, 49 A.D.3d 300 (N.Y. App. Div. 2008).

While Kirk's first lawsuit was pending in federal district court, he availed himself of VEVRAA's administrative enforcement and remedial schemes to open an additional front in his campaign against Schindler. 38 U.S.C. § 4212(b) (providing that a covered veteran who believes that a contractor is in violation of VEVRAA may file a complaint with the Secretary of Labor, who "shall promptly investigate such complaint"). Kirk filed a complaint against Schindler with the Department of Labor's Office of Federal Contract Compliance Programs alleging that Schindler had discriminated against him because of his status as a Vietnam-era veteran and asserting that Schindler had violated several provisions of VEVRAA. SA 67-70. In particular, Kirk alleged that Schindler did not have an affirmative-action program for veterans and that he was never invited to identify himself to Schindler as a veteran. SA 69.[1]

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[1] Government contracts subject to VEVRAA must contain provisions requiring the contractor to "take affirmative action to employ and advance in employment qualified covered veterans." 38 U.S.C. § 4212(a)(1). Covered con-

After completing its inquiry, the compliance office denied Kirk's discrimination claim and found no evidence that Schindler had violated VEVRAA. SA 56-65. The agency concluded that "Schindler does have an affirmative action program for covered veterans, which include[s] an invitation for veterans to s[elf] identify their veteran status." SA 64. The compliance office's findings were upheld on administrative appeal in a decision that quoted directly from Schindler's 2004 affirmative-action policy, which specifically calls for employees to self-identify as veterans. JA 117a-18a.

While Kirk's administrative appeal was pending, he filed this qui tam case under the False Claims Act ("FCA"), 31 U.S.C. § 3729, *et seq.* The FCA imposes civil penalties and treble damages on any person who knowingly submits "a false or fraudulent claim for payment or approval" to the federal government. 31 U.S.C. § 3729(a)(1)(A). The Attorney General may bring a civil action if he finds that a person has committed a violation. 31 U.S.C. § 3730(a). Alternatively, the act allows private persons to bring qui tam actions in the name of the United States for violations about which they have personal knowledge. 31 U.S.C. § 3730(b). The act provides enormous financial incentives for private citizens to come forward with information revealing a fraud. A relator stands to gain at least 15% and as much as 30% of the government's recovery as well as an award of attorneys' fees and costs. 31 U.S.C. § 3730(d).

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tractors must "invite all . . . eligible veterans" to identify themselves to their employer. 48 C.F.R. §§ 22.1310(b), 52.222-37(e) (2009).

Kirk filed his original complaint in this case under seal. See 31 U.S.C. § 3730(b)(2) (requiring qui tam relators to file their complaints under seal while the government decides whether to participate in the case). After the government declined to intervene in the case, the district court unsealed the complaint and Kirk filed an amended complaint. In his amended complaint, Kirk alleged that between 1998 and 2006, Schindler entered into hundreds of contracts with the federal government subject to VEVRAA but failed to comply with VEVRAA's reporting requirements. See JA 14a-15a. In particular, Kirk alleged that for several years between 1998 and 2006, Schindler did not file "VETS-100" reports allegedly required by VEVRAA, and that, in other years, Schindler filed false VETS-100 reports. See JA 33a-37a.

A government contractor covered by VEVRAA must submit annual VETS-100 reports to the Secretary of Labor providing data regarding qualified veterans in its workforce. See 38 U.S.C. § 4212(d); 48 C.F.R. § 52.222-37. The VETS-100 reporting requirements are complex. Each covered contractor must specify for each job category the total number of employees in its workforce and the number who are qualified covered veterans. 38 U.S.C. § 4212(d)(1)(A). The report must also detail the number of new employees hired by the contractor during the reporting period, and the number of those new employees who are qualified covered veterans. 38 U.S.C. § 4212(d)(1)(B). Additionally, the contractor must calculate the maximum and minimum number of employees in its workforce during the period covered by the report. 38 U.S.C. § 4212(d)(1)(C).

A separate report is required for each "hiring location" with 50 or more employees.[2]

Contractors are not required to—and cannot—certify that the VETS-100 reports they submit accurately state the number of veterans in their employ. Instead, contractors "shall base the count of veterans reported . . . on *voluntary disclosure*." 48 C.F.R. § 52.222-37(e) (2009) (emphasis added).[3] Companies that report higher numbers of veteran employees are not afforded preferences or other benefits in relation to companies that report lower numbers.

A federal agency may not, with certain exceptions, enter into a contract with a business that has not filed a required VETS-100 report for the prior fiscal year. 31 U.S.C. § 1354; see also 48 C.F.R. § 52.222-38 (providing that "by submission of its offer, the offeror represents that, if it is subject to the reporting requirements [of VEVRAA] . . . it has submitted the most recent VETS-100 Report required"). But this prohibition has a cure provision: it "cease[s]

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[2] U.S. Dep't of Labor, VETS-100 Federal Contractor Report on Veterans Employment, http://www.dol.gov/vets/programs/fcp/vets-100.pdf (last visited Nov. 28, 2010).

[3] This provision was amended in September 2010 to provide: "The number of veterans reported must be based on data known to the contractor when completing the VETS–100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60–300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor." 48 C.F.R. § 52.222-37(f).

to apply . . . on the date on which the contractor submits the report." 31 U.S.C. § 1354(a)(2).

If a government contractor materially violates VEVRAA, the Labor Department's contract-compliance office may pursue several different remedies. "[I]f the contractor is willing to correct the violations and/or deficiencies," the contractor and the agency may enter into "a written conciliation agreement." 41 C.F.R. § 60-250.62. Other possible remedies include the withholding of progress payments, termination of a contract, or debarment from future contracting. Debarred contractors may apply for reinstatement if they can "show that they have established and will carry out employment policies and practices in compliance with [VEVRAA]." 41 C.F.R. § 60-250.68.

Kirk had no personal knowledge of Schindler's VETS-100 reporting practices from his prior employment at the company. He based his allegations that Schindler was required to file VETS-100 reports on data from a publicly accessible government website, which purport to identify contracts between Schindler and various governmental entities. SA 6-54. His allegations about the reports themselves are based on the government's responses to several requests that his wife, Linda Kirk, submitted to the Labor Department under FOIA, 5 U.S.C. § 552, seeking Schindler's VETS-100 reports for various years. In response to each request, the Labor Department searched its records for Schindler's VETS-100 reports for the specified years and provided Mrs. Kirk with a letter reporting the results of its search. SA 100, 106, 138. These letters indicated that the Labor Department was unable to locate any reports filed by

Schindler for the years 1998 to 2003. SA 100, 106. The Labor Department did locate Schindler's VETS-100 reports for the years 2004 to 2006 and provided copies of them to Mrs. Kirk, see SA 101-03, 139-206, though it redacted portions of those copies pursuant to the Privacy Act.[4] See SA 100, 106.

Based on the results of the Labor Department's investigation and its written responses to his wife, Kirk alleges that from 1998 to 2003 Schindler failed to file VETS-100 reports required by VEVRAA. Kirk also alleges that the VETS-100 reports filed by Schindler after 2003 knowingly undercounted the number of eligible veterans employed by Schindler. Although Kirk left Schindler in 2003, he contends that because he was unaware of an affirmative action program that asked veterans to self-identify, the company could not have collected the information necessary to file accurate reports after 2003. Kirk also alleges that he knows of certain Schindler employees who are veterans and who are supposedly not counted in Schindler's VETS-100 filings. He does not allege that these employees ever self-identified as veterans to Schindler.

Kirk maintains that because of Schindler's alleged failures to comply with VEVRAA, each of the company's requests for payment under a VEVRAA-covered contract was a false claim. He does not dispute that Schindler provided quality goods and ser-

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[4] The Labor Department also found and provided several reports for the year ending September 30, 2002. See SA 107-34. Kirk alleges that because the Labor Department found these reports in 2005, Schindler must have belatedly filed them.

vices to the government at a fair price. Instead, Kirk rests his qui tam claims on a "legally false certification" theory of liability. This theory, which has been endorsed by several courts of appeals but never adopted by this Court, "is predicated upon a false representation of compliance with a federal statute or regulation" as a prerequisite to receipt of a government payment. *United States ex rel. Mikes v. Straus*, 274 F.3d 687, 696 (2d Cir. 2001).[5]

Under the legally false certification theory, a person can be liable under the FCA for regulatory violations even when, like VEVRAA, the regulatory scheme has its own enforcement and remedial mechanisms that provide for penalties far less drastic than the fines and treble damages the FCA authorizes. A company may also face FCA liability under the legally false certification theory when the government, aware of the purported regulatory violation, declines to intervene in the qui tam action or decides not to prosecute the violation.

Based on this theory of liability, Kirk alleges that the damages to the federal government exceed $100 million and that the FCA's treble damages provision increases Schindler's liability to more than $300 million. He also seeks statutory civil penalties ranging

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[5] The "legally false certification" theory thus differs from the archetypal FCA action, which alleges that a contractor has overcharged the government for substandard goods or services, or that a government contractor has requested payment for goods or services not actually provided. The courts of appeals have labeled such claims "factually false" certification claims. See *Mikes*, 274 F.3d at 697.

from $5,500 to $11,000 for each request for payment to the government during the relevant period.

The district court granted Schindler's motion to dismiss the complaint. It held that although Kirk's allegations that Schindler failed to file VETS-100 reports stated a claim under the FCA, those claims were jurisdictionally barred under the FCA's public-disclosure bar. As relevant here,[6] the public-disclosure bar provides:

> No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

31 U.S.C. § 3730(e)(4)(A).

The district court held that the Labor Department's letters responding to Mrs. Kirk's FOIA requests constituted "administrative . . . report[s] . . .

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[6] The Patient Protection and Affordable Care Act, Pub L. No. 111-148, 124 Stat. 119 (2010), amended the public-disclosure bar in certain respects, none of which is relevant to the issue presented here. The amended language is set forth at Pet. App. 105a-106a. Because the amendments were not made retroactive, see *Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. __, 130 S. Ct. 1396, 1400 n.1 (2010), the statutory language in effect when Kirk filed his complaint governs this case.

or investigation[s]" within the meaning of 31 U.S.C. § 3730(e)(4); those reports or investigations were "publicly disclosed;" Kirk's allegations were "based upon" the information contained in the FOIA responses; and Kirk was not an "original source" of the information. See Pet. App. 74a, 75a-87a.

The Court of Appeals for the Second Circuit vacated the judgment and remanded for further proceedings. Even though Kirk lacked firsthand knowledge of the allegedly false certifications of VEVRAA compliance and his allegations were based on information the government disclosed to Mrs. Kirk in response to FOIA requests, the court held that Kirk's claims were not prohibited by the public-disclosure bar. Rejecting the majority view of the courts of appeals, the Second Circuit concluded that FOIA responses are not themselves "reports" and that FOIA searches are not "investigations" within the meaning of the public-disclosure bar.

Instead, the Second Circuit held that whether documents disclosed in response to FOIA requests constitute "reports" or "investigations" depends on the nature of the documents. Pet. App. 23a. Specifically, the Second Circuit held that the word "report" as used in § 3730(e)(4) "connotes the compilation or analysis of information with the aim of synthesizing that information in order to serve some end of the government." Pet. App. 24a. And the court further held that "investigation" must be construed more "narrowly than simply a 'detailed examination' or 'search.' Instead, an 'investigation' here implies a more focused and sustained inquiry directed toward a government end for example, uncovering possible noncompliance or assembling

information relevant to a problem of particular concern to the government." *Id.* Because it determined that the documents turned over in response to Mrs. Kirk's FOIA requests were not administrative "reports" or "investigations" under its narrow definitions, the court concluded that the public-disclosure bar did not apply to Kirk's claims. Pet. App. 33a.

After determining that it had subject-matter jurisdiction, the court held that Kirk had validly stated a claim as to both his allegations that Schindler failed to file certain VETS-100 reports and his allegations that Schindler filed false VETS-100 reports. See Pet. App. 34a-47a.

SUMMARY OF ARGUMENT

The court of appeals' conclusion that FOIA responses do not trigger the public-disclosure bar, 31 U.S.C. § 3730(e)(4)(A), contorts the meaning of the statutory language, defeats congressional intent in enacting it, and imposes far-reaching and damaging consequences—not only for federal contractors and other recipients of government funds but also for the government itself.

As this Court has repeatedly observed, statutory language used by Congress should presumptively be interpreted in accordance with its ordinary, commonplace meaning. To respond to a FOIA request, an agency must search its records for responsive documents and then analyze those documents to determine whether any of FOIA's nine exemptions to disclosure apply. This inquiry fits easily within the ordinary meaning of "investigation." Once the agency's analysis is complete, it must provide the re-

quester with official notification of the results of its search. This response comes within the ordinary meaning of "report." Indeed, the Second Circuit's opinion in this very case refers to the Labor Department's responses to Mrs. Kirk's FOIA requests as "FOIA reports." Pet. App. 12a.

Affording these terms their ordinary meanings is necessary to give effect to Congress's intent when enacting the public-disclosure bar. Congress's overriding purpose was to ensure that only persons with direct, firsthand knowledge of fraud who genuinely contributed to its exposure could lay claim to the FCA's enormous bounties. A person who bases qui tam claims on information publicly disclosed in an official notification of findings or conclusions by the government (a "report") or during an official search of government records (an "investigation") is not one with firsthand knowledge and thus not one whom Congress intended to reward. This is so regardless whether the search or notification involves sustained governmental analysis or was intended to uncover misconduct. Congress did not intend the bar's applicability to depend on whether the government viewed the challenged conduct as actionable fraud. Instead, Congress intended the bar to apply whenever qui tam claims are based on information that was publicly disclosed in an official governmental act or that bears the government's imprimatur, unless the relator was an original source of the information.

To hold, like the court below, that FOIA responses do not trigger the public-disclosure bar contravenes this purpose. Under this interpretation, even complete strangers to the alleged fraud may bring qui tam actions and claim the FCA's sizable

rewards based solely on information that the government has placed in the public domain. The statutory text provides no support for this erroneous result. The court of appeals' proffered reason for its narrow reading of the statutory terms—the *noscitur a sociis* canon—was found by this Court to be an unreliable guide to the public-disclosure bar's meaning just last term in *Graham County* and should be rejected in this case as well. But even if the public-disclosure bar were to be narrowly construed, it still would be applicable here because responding to FOIA requests requires sustained governmental analysis to identify responsive documents and to interpret and apply the statutory exemptions to disclosure.

The drafting history of § 3730(e)(4)(A) confirms that FOIA responses trigger the public-disclosure bar. Congress tried varied approaches to the qui tam provisions—first allowing any private party to bring suit, which led to parasitic claims, then prohibiting all suits based on information the government possessed, which barred even claims based on the relator's independent knowledge—before settling on the public-disclosure bar. The objective that emerges from this history and from the statutory text is clear: Prohibit suits based on publicly disclosed information unless the relator is the original source. Under the court of appeals' statutory interpretation, however, anyone may use a FOIA request to require the government to provide information that can then be used to file FCA claims against federal contractors. In effect, anyone may submit a FOIA request and require the government to perform and report the results of an investigation, without being constrained by the broad terms of the public-disclosure bar.

Congress did not, as the Second Circuit believed, make the bar's applicability depend on whether the government was investigating, or likely to investigate, the supposed fraud. That standard incorrectly looks to the *government's* conduct, whereas Congress intended the bar to apply whenever the *relator* has public, as opposed to firsthand, information. Indeed, when enacting the public-disclosure bar in 1986, Congress considered—but ultimately decided *against*—permitting qui tam suits based on publicly disclosed information if the government had failed to act against the alleged fraud. The Second Circuit's interpretation of § 3730(e)(4)(A) resurrects this failed legislative proposal.

Disregarding the public-disclosure bar's language and legislative intent, as the court of appeals has done, would have damaging consequences that reach far beyond federal contractors and other recipients of government funds. The government itself will be penalized because its costs of doing business will rise as companies withdraw from the market for government contracts or pass along to the government the costs of anticipated litigation risks. Moreover, because bounty-seeking relators will bring FCA actions whenever possible, the government's discretion to select appropriate enforcement mechanisms for various regulatory infractions will be severely impaired. This surge in FCA litigation will do little if anything to help the government control fraud. For many regulatory requirements—including those imposed by VEVRAA—Congress has already established administrative enforcement schemes that provide ample tools to ensure compliance. The only winners will be the class of professional relators, whose ranks will

swell exponentially once released from the FCA's jurisdictional barrier against parasitic lawsuits.

ARGUMENT

I. THE PUBLIC-DISCLOSURE BAR'S PLAIN TERMS ENCOMPASS RESPONSES TO FOIA REQUESTS.

The Second Circuit's exclusion of FOIA responses from the public-disclosure bar cannot be squared with the plain language of § 3730(e)(4)(A). When an agency receives a FOIA request, it must conduct an investigation to identify responsive documents, analyze them to determine whether they are subject to disclosure and then report its findings. In all respects, therefore, FOIA responses fall within the ordinary meanings of the terms "investigation" and "report," and there is no reason to think that Congress intended a more constrained meaning. Indeed, applying § 3730(e)(4)(A) to FOIA responses is necessary to effectuate Congress's intent "to minimize the potential for parasitic lawsuits by those who learn of the fraud through public channels and seek remuneration although they contributed nothing to the exposure of the fraud." *Graham County*, 130 S. Ct. at 1408 n.16 (internal quotation marks omitted); see also *Hughes Aircraft Co. v. United States ex rel. Schumer*, 520 U.S. 939, 946 (1997) ("Congress amended the FCA in 1986 . . . to permit qui tam suits based on information in the Government's possession, except where the suit was based on information that had been publicly disclosed and was not brought by an original source of the information."). If FOIA responses are not deemed "reports" or "investigations," then complete strangers to an alleged fraud may bring qui tam actions seeking damages for publicly disclosed

regulatory noncompliance of which they have no personal knowledge whatsoever.

A. An Agency's Response to a FOIA Request Comes Within the Ordinary Meanings of "Report" and "Investigation."

The FCA deprives the courts of jurisdiction over qui tam actions that are "based upon the public disclosure of allegations or transactions in a[n] . . . administrative . . . *report* . . . or *investigation* . . . unless . . . the person bringing the action is an original source of the information." 31 U.S.C. § 3730(e)(4)(A) (emphasis added) (footnote omitted).

Interpretation of this provision "must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 252 (2004) (internal quotation marks omitted). Here, this first step of the analysis should also be the last. See *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) ("[O]ur inquiry begins with the statutory text, and ends there as well if the text is unambiguous."). This is especially so because the public-disclosure bar is a jurisdictional provision and must therefore be "strictly construe[d] . . ., resolving *any* doubts against jurisdiction." *United States ex rel. Holmes v. Consumer Ins. Grp.*, 318 F.3d 1199, 1216 (10th Cir. 2003) (en banc) (emphasis in original).

As most of the courts of appeals to have reached the issue have recognized, an agency's response to a FOIA request is a "report" and its search for documents responsive to such a request is an

"investigation."[7] In reaching this conclusion, these courts properly adhered to the "fundamental canon of statutory construction . . . that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42 (1979). It is readily apparent—and the Second Circuit never disputed—that the ordinary meanings of "report" and "investigation" include an agency's search of records and official determination in response to a FOIA request.

"A 'report' is defined as, among other things, 'something that gives information' or a 'notification,' *Webster's Third New Int'l Dictionary* 1925 (1971), and an 'official or formal statement of facts or proceeding.' *Black's Law Dictionary* 1300 (6th ed. 1990)." *Mistick*, 186 F.3d at 383.[8] FOIA responses fall squarely within these definitions because they "provide[] information and notification regarding the results of the agency's search for the requested doc-

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[7] *United States ex rel. Mistick v. Housing Auth. of the City of Pittsburgh*, 186 F.3d 376, 383-84 (3d Cir. 1999); *United States ex rel. Ondis v. City of Woonsocket*, 587 F.3d 49, 56 (1st Cir. 2009); *United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168, 176 (5th Cir. 2004); cf. *United States ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038, 1049 (10th Cir. 2004).

[8] See also *Dukes v. Ralston Purina Co.*, 127 Ga. App. 696, 697, 194 S.E.2d 630, 631 (Ga. Ct. App. 1972) ("Of course, the word 'report' is not a word of art, and its ordinary signification, as defined by Webster, is to give an account of, to relate, to tell."); Black's Law Dictionary 1414 (9th ed. 2009) (report: "A formal oral or written presentation of facts . . . .").

uments and constitute[] an official and formal statement concerning those results." *Id.* at 383-84. In this case the Labor Department sent to Mrs. Kirk the agency's official "determination" based on a "search of records" conducted by its "Investigation and Compliance Division." SA 100, 106. Tellingly, the Second Circuit itself referred to the Labor Department's responses to Mrs. Kirk as "FOIA reports." Pet. App. 12a.

Responding to a FOIA request also involves an "investigation." "Accepted definitions of the term 'investigation' include 'a detailed examination,' Webster's Third New International Dictionary 1189 (1971), and the 'making of a search.' 1 The Compact Edition of the Oxford English Dictionary 457 (1971)." *Mistick*, 186 F.3d at 384. Upon receiving a FOIA request, an agency must "conduct a search that is reasonably calculated to uncover all relevant documents." *Id.*; see also 5 U.S.C. § 552(a)(3)(D) (defining a "search" to mean "review, manually or by automated means, [of] agency records for the purpose of locating those records which are responsive to a request."). And this is merely the first step in the process. The agency must then examine the responsive records to determine whether any of FOIA's nine exemptions to disclosure applies, mindful that an arbitrary or capricious withholding of records can subject agency personnel to disciplinary action at the urging of a special counsel. 5 U.S.C. § 552(a)(4)(F)(i),(b),(c). An inquiry of this nature comes within the ordinary meaning of "investigation." Thus, not surprisingly, searches performed in response to FOIA requests are referred to in ordinary usage as "FOIA investigations." See, e.g., *Madison Mech., Inc. v. Nat'l Aeronautics &*

Space Admin., No. Civ. A. 99-2854 (EGS), 2003 WL 1477014, at *6 (D.D.C. Mar. 20 2003) (describing "NASA employees involved in the FOIA investigation"); *Malinowski v. F.B.I.*, No. 86 Civ. 2239 (JFK), 1987 WL 12826, at *1 (S.D.N.Y. June 17, 1987) (describing "inquiries . . . made in the course of a[] FOIA investigation").

Moreover, interpreting "report" and "investigation" according to their ordinary meanings provides a simpler and clearer jurisdictional test for district courts to apply than the fact-dependent inquiries required by the Second Circuit's interpretation of the statute. This Court has cautioned that "jurisdictional rules should be clear." *Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 621 (2002).[9] The Second Circuit's test for identifying a report or investigation, however, is anything but clear. Under the Second Circuit's test,

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[9] See also *Hertz Corp. v. Friend*, 559 U.S. __, 130 S. Ct. 1181, 1193 (2010) (explaining that "administrative simplicity is a major virtue in a jurisdictional statute," that "[c]omplex tests produce appeals and reversals, encourage gamesmanship," and that "courts benefit from straightforward rules under which they can readily assure themselves of their power to hear a case"); *Sisson v. Ruby*, 497 U.S. 358, 375 (1990) (Scalia, J., concurring in judgment) ("The boundary between judicial power and nullity should . . ., if possible, be a bright line, so that very little thought is required to enable judges to keep inside it." (quoting Z. CHAFEE, THE THOMAS M. COOLEY LECTURES, SOME PROBLEMS OF EQUITY 312 (1950) (quoting *Hanover Star Milling Co. v. Metcalf*, 240 U.S. 403, 426 (1916) (Holmes, J., concurring)))); see also *id.* ("In short, a trial judge ought to be able to tell easily and fast what belongs in his court and what has no business there.").

before a court can determine whether a disclosure is the product of an investigation, it will have to determine whether the government engaged in a "focused and sustained inquiry" that gathered information relevant to "a problem of particular concern to the government." Pet. App. 24a. Thus, courts will have to engage in factual inquiries into the nature of the government's acts and the importance of the government's concern. Such a vague standard is inappropriate for a jurisdictional inquiry. Interpreting "report" and "investigation" in accordance with their plain meanings, however, provides straightforward rules for courts applying the public-disclosure bar.

B. Construing "Report" and "Investigation" in Accordance with their Ordinary Meanings Is Consistent with Congress's Purposes.

When interpreting a statute, this Court's "obligation is to give effect to congressional purpose so long as the congressional language does not itself bar that result." *Johnson v. United States*, 529 U.S. 694, 710 n.10 (2000). The public-disclosure bar's purpose is to discourage qui tam suits by "opportunistic plaintiffs who have no significant information to contribute of their own." *Graham County*, 130 S. Ct. at 1406 (internal quotation marks omitted). As Senator Grassley, the principal sponsor of the 1986 amendment to the FCA that added the public-disclosure bar, explained, the bar "seeks to assure that a qui tam action based solely on public disclosures cannot be brought by an individual with no direct or independent knowledge of the information." 132 Cong. Rec. S11238-04, 1986 WL

783415, at 20 (Aug. 11, 1986) (statement of Sen. Grassley).

Affording the terms "report" and "investigation" their ordinary meanings—and thus construing them to reach FOIA responses—effectuates this purpose. When the allegations in a qui tam suit are based on information learned in a FOIA response, the relator has not contributed any significant information himself and thus has done nothing to earn the copious rewards made available by the FCA. These are precisely the sort of parasitic lawsuits that Congress intended to prohibit.

The Second Circuit's statutory interpretation opens the floodgates to opportunistic suits and therefore vitiates Congress's intent. Any person can identify government contractors from publicly available data—just as Kirk downloaded information about Schindler's putative contracts from a government website—and then submit FOIA requests to test the contractor's compliance with VEVRAA and numerous other regulatory conditions to payment. If required filings are reported missing or other infractions found, that person can, according to the Second Circuit, bring a qui tam action against the contractor, just as Kirk has done.

The relators in such actions will not be the "whistle-blowing insiders" that Congress wanted to encourage. *Graham County*, 130 S. Ct. at 1406. To the contrary, they need not have any direct knowledge at all of the entities against whom they bring suit. All of the information necessary to make the critical allegations in such actions—that the defendant is subject to regulatory requirements and appears to be in

non-compliance—is available through FOIA requests and other public channels.

Despite the ease by which qui tam suits like these could be brought by complete strangers to the alleged fraud, the Second Circuit found it dubious that relators "who obtain information through FOIA requests will generally . . . be opportunistic litigators."[10] Pet. App. 29a-30a. The court's doubt grossly underestimates the mercenary incentives that often drive litigation—especially litigation with payoffs as large as those potentially available in qui tam actions. Kirk's complaint alleges hundreds of millions of dollars in damages, meaning that he could potentially recover a windfall of more than $90 million. 31 U.S.C. § 3730(d). And the damages sought against other contractors who, unlike Schindler, specialize in government work could be multiples higher. To lay the groundwork for suits claiming these eye-popping

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[10] To support this view, the Second Circuit claimed that Kirk's wife submitted FOIA requests only after he "became suspicious, based on his own experience . . . that Schindler was not in compliance with VEVRAA." Pet. App. 30a. But Kirk did not, and could not, allege any personal knowledge of Schindler's VETS-100 filings. At most, he alleged that he was not aware of any Schindler policy encouraging veterans to self-identify. See JA 22a-23a, 33a. Putting aside the fact that the Labor Department quoted directly from Schindler's written policy inviting veterans to self-identify, JA 117a-18a, a "suspicion" of this kind is completely unnecessary to a qui tam action like this one. Nothing more is needed than a FOIA response suggesting noncompliance with a regulatory condition to government payment. And nothing prevents any private party from submitting FOIA requests to test the compliance of every federal contractor.

awards, a would-be relator needs little more than an Internet connection and the postage necessary to mail FOIA requests. If permitted to do so, bounty-seeking relators will bring these actions in droves.

In sum, interpreting "report" and "investigation" to include FOIA responses furthers the statutory purposes and, moreover, gives these words their plain and ordinary meanings. The contrary view, on the other hand, imposes unwarranted limits on the plain meanings of these words and undercuts the purposes and policies of the public-disclosure bar. There is simply no language in the statute that suggests that Congress intended to allow relators who did not have direct knowledge of the alleged fraud to bring qui tam suits simply because the allegations were publicly disclosed by the government in a document or proceeding not intended to analyze or synthesize information or expose misconduct. The Court should reject this unduly narrow reading of the statute and instead give the public-disclosure bar the meaning that Congress intended. *Dunn* v. *CFTC*, 519 U.S. 465, 474 (1997) ("[T]he purposes underlying the [statute] are most properly fulfilled by giving effect to the plain meaning of the language as Congress enacted it.").

C. The Court of Appeals Incorrectly Applied the *Noscitur a Sociis* Canon to Narrow the Meanings of "Report" and "Investigation" and Deem Those Terms Inapplicable to FOIA Responses.

The Second Circuit never disputed that FOIA responses come within the ordinary meanings of "report" and "investigation." But the court erroneously held that the meanings of these

"potentially broad terms" should be "narrowed" by application of the canon of *noscitur a sociis*, Pet. App. 23a, which counsels that an ambiguous statutory term "may be known by the company it keeps." *Graham County*, 130 S. Ct. at 1402 (internal quotation marks omitted).

The *noscitur a sociis* canon, however, may be utilized only when the meaning of a term is otherwise obscure or ambiguous. See Norman J. Singer, Statutes and Statutory Construction § 47:16, at 347 (7th ed. 2007) (canon "will not be applied where there is no ambiguity").[11] It is not applicable here because "report" and "investigation" are commonly used terms with well-understood meanings. See *United States v. Stevens*, 559 U.S. __, 130 S. Ct. 1577, 1588 (2010) (rejecting use of *noscitur a sociis* because "the phrase 'wounded . . . or killed' . . . contains little ambiguity"). In these circumstances, Congress is presumed to have intended the statutory terms to bear their ordinary meanings unless it specifically defines them otherwise, which it has not done here. See *Engine Mfrs. Ass'n*, 541 U.S. at 252. Because the Second Circuit did not, and could not, provide any basis for overcoming this presumption, *noscitur a sociis* is not

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[11] Cf. *Russell Motor Car Co. v. United States*, 261 U.S. 514, 520 (1923) ("Noscitur a sociis is a well established and useful rule of construction where words are of obscure or doubtful meaning; and then, but *only then*, its aid may be sought to remove the obscurity or doubt by reference to the associated words.") (emphasis added); *Virginia v. Tennessee*, 148 U.S. 503, 519 (1873) (applying the canon where a term was "obscure or of doubtful meaning, taken by itself").

a reliable guide to legislative intent. Cf. *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 702 (1995) (reversing decision that relied on *noscitur a sociis* and "thereby den[ied] . . . independent meaning" to the disputed term).

The Second Circuit claimed that, "[i]n applying the *noscitur a sociis* canon," it had "taken guidance from the Supreme Court's decision in *Graham County*." Pet. App. 24a n.6. This Court's instructions in *Graham County*, however, were to the contrary. Far from supporting the canon's use in interpreting § 3730(e)(4)(A), the Court expressly *rejected* the Fourth Circuit's interpretation of the public-disclosure bar after "find[ing] [its] use of *noscitur a sociis* unpersuasive." *Graham County*, 130 S. Ct. at 1403.

Moreover, just like the Fourth Circuit in *Graham County*, the Second Circuit in this case failed to consider all of the relevant statutory terms when attempting to apply this interpretive canon. The Second Circuit disregarded this Court's explicit directive that "*all* of the sources listed in § 3730(e)(4)(A)"—including, specifically, "the news media"—"provide interpretive guidance." *Id.* at 1404. Indeed, the court below conspicuously ignored "the news media" when purporting to find a common thread of meaning in "the terms 'hearing,' 'report,' 'audit,' and 'investigation.'" Pet. App. 25a n.6. Had the Second Circuit considered this source specifically enumerated in § 3730(e)(4), as it should have, it could not have concluded that the public-disclosure bar is triggered only by "synthesizing . . . information in order to serve some end of the government." Pet. App. 24a.

As was true in *Graham County*, "[t]he substantive connection, or fit, between the [statutory] terms . . . is not so tight or so self-evident as to demand that [the Court] 'rob' any one of them of its 'independent and ordinary significance.'" 130 S. Ct. at 1403; see also *Reiter v. Sonotone Corp.*, 442 U.S. 330, 338-39 (1979). Apart from the disputed terms "report" and "investigation," the Second Circuit considered only two others: "hearing" and "audit." Pet. App. 25a n.6. These four terms do not have a "shared core of meaning" that is exclusive of FOIA responses. *Id.* (internal quotation marks omitted). An "audit" is simply a verification of financial accounts.[12] A "hearing" is generally considered to be synonymous with a "proceeding." *United States ex rel. Poteet v. Bahler Med., Inc.*, 619 F.3d 104, 113 (1st Cir. 2010). If anything, Congress's use of these disparate terms, and the even broader terms "report" and "investigation," suggests an intent to reach all of the varied circumstances in which the government undertakes an inquiry or provides notifications of facts, results, or conclusions.

That the terms "report, hearing, audit, or investigation" are distinct from each other is also reflected in the statute's use of the disjunctive "or." *Graham County*, 130 S. Ct. at 1403 (recognizing that the terms "congressional, administrative, *or* [GAO]" are not "completely harmonious," even if not "completely disjunctive") (emphasis in original). "Canons of construction ordinarily suggest that

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[12] See *Black's Law Dictionary* 150 (9th ed. 2009) (audit: "A formal examination of an individual's or organization's accounting records, financial situation, or compliance with some other set of standards.").

terms connected by a disjunctive be given separate meanings . . . ." *Reiter*, 442 U.S. at 339. The Second Circuit, however, refused to give "report" and "investigation" their own natural meanings and instead demanded that they share ostensible characteristics of other methods of disclosure included in the statute.

But the various methods of disclosure disjunctively enumerated in the public-disclosure bar cannot be used to limit one another. In fact, when statutory terms are listed disjunctively, "[t]he meaning of the several words, standing apart, being perfectly plain, what should be done is to apply them distributively, diverso intuitu, giving to each its natural value and appropriate scope when read in connection with the object . . . which they are severally meant to control." *Russell Motor Car Co.*, 261 U.S. at 520-21. In this case, the object that "report" and "investigation" are intended to control is the "public disclosure of allegations or transactions." Thus, "report" and "investigation" should be given their ordinary meanings as methods of "public disclosure." Because "disclosure" means to reveal new facts or make known something previously unknown, giving full breadth to the ordinary meanings of "report" and "investigation" to include the giving of notice of information or searching for information, respectively, is natural and appropriate in the context of the FCA's public-disclosure bar.

D. An Agency's Response to a FOIA Request Constitutes a "Report" or "Investigation" Even under a Narrow Interpretation of Those Terms.

In any event, even as incorrectly narrowed by the court below, the disputed statutory terms would encompass FOIA responses. The Second Circuit concluded otherwise only because it mistakenly believed that FOIA responses involve only a "mechanistic production of documents." Pet. App. 24a.[13] In truth, however, FOIA responses require agencies to undertake complex inquiries and analyses. Indeed, this Court has decided numerous cases addressing whether agency records are disclosable under FOIA, and will hear at least two more such cases in its October 2010 term alone.[14]

One reason this close judicial scrutiny is needed is that FOIA's exemptions to disclosure are complex and may require a balancing of competing interests, such as the right to personal privacy and the right to know of an agency's official acts. 5 U.S.C. § 552(b),(c). Another reason is that statutes other than FOIA may preclude disclosure. See 5 U.S.C. § 552(b)(3). Indeed, portions of Schindler's VETS-

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[13] See also *United States ex rel. Haight v. Catholic Healthcare West*, 445 F.3d 1147, 1153 (9th Cir. 2006) ("[R]esponding to a FOIA request requires little more than duplication."); *Mistick*, 186 F.3d at 393 (Becker, C.J., dissenting).

[14] See *Milner v. Dep't of the Navy*, No. 09-1163, *cert. granted*, ___ U.S. ___, 130 S. Ct. 3505 (2010); *FCC v. AT&T*, No. 09-1279, *cert. granted*, ___ U.S. ___, 2010 WL 1623772 (Sept. 28, 2010).

100 reports released in this case were redacted to comply with the Privacy Act, 5 U.S.C. § 552a, and the disclosure of such reports could arguably violate the Trade Secrets Act, 18 U.S.C. § 1905.[15]

The non-ministerial character of the processes set in motion by a FOIA request is also evident from the statute itself. It directs each agency to "designate a Chief FOIA Officer who shall be a senior official of such agency."[16] 5 U.S.C. § 552(j). When a FOIA request is received, lower-level employees must first identify the records in the agency's possession that are responsive to the request, which may require discretionary judgments and, in some cases, further information from the requester.[17] 5

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[15] See *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979) (remanding to Court of Appeals to determine whether FOIA disclosure of EEO-1 reports, which state a federal contractor's total number of employees and the number who are women or members of minority groups, violated the Trade Secrets Act); cf. *Met. Life Ins. Co. v. Usery*, 426 F. Supp. 150 (D.D.C. 1976) (holding that EEO-1 reports fall within FOIA's exemption for trade secrets).

[16] The Chief FOIA Officer must, among other things, "monitor implementation of [FOIA] throughout the agency," and keep the head of the agency and the Attorney General informed of the agency's performance. 5 U.S.C. § 552(k)(2). Each agency must also name one or more "supervisory officials" as "FOIA Public Liaisons," to communicate with persons making FOIA requests and, among other duties, to "assist[] in the resolution of disputes." 5 U.S.C. § 552(k)(6).

[17] See, e.g., Ltr. from Office of Solicitor General to Terence P. Jeffrey, June 25, 2010 (available at http://mrc.org/pdf/CNS%20FOIA.pdf) (requesting clarification of FOIA re-

U.S.C. §§ 552(a)(3)(D), (a)(6)(A)(ii)(I). Next they must determine whether the responsive records, or any portions of them, are exempt from disclosure. FOIA sets out nine such exemptions, a number of which require a balancing of competing interests or other complex analyses. 5 U.S.C. § 552(b). According to the Labor Department—which issued the FOIA responses in this case—"[m]any [FOIA] requests require a line-by-line review of hundreds or even thousands of pages of documents." U.S. Dep't of Labor, The Freedom of Information Act Guide ("DOL Guide"), http://www.dol.gov/dol/foia/guide6.htm.[18]

Finally, agencies must report the results of these examinations, which the Labor Department does in a written "determination letter."[19] DOL Guide. Notwithstanding the risk of disciplinary action if documents are arbitrarily withheld,[20] the Labor

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quest for records concerning "the administration's health-care reform plan").

[18] In some cases, more than one agency, or agency department, must perform this analysis for a single record. 5 U.S.C. § 552(a)(6)(B)(iii)(III).

[19] If only parts of a record are exempt from disclosure, then the agency must provide the requester with "[a]ny reasonably segregable portion" and state the amount of information withheld and the applicable exemption, unless doing so "would harm an interest protected by the exemption." 5 U.S.C. § 552(b).

[20] If a court finds there to be a question whether the agency acted "arbitrarily or capriciously" in withholding information, then a "Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible." 5 U.S.C. § 552(a)(4)(F)(i).

Department denies almost half of the FOIA requests it receives, based on the agency's investigation.[21]

These processes bear little resemblance to the robotic photocopying of documents imagined by the Second Circuit. And they belie the mistaken conclusion that FOIA responses are not "report[s]" or "investigation[s]" due to the absence of a "focused and sustained inquiry," Pet. App. 24a, or "independent governmental leg-work," *Catholic Healthcare*, 445 F.3d at 1153.

Indeed, in this case the agency's efforts in FOIA responses is evident on the face of the responses themselves. Kirk's allegations that Schindler did not file VETS-100 reports for certain years are based entirely on determination letters sent by the Department of Labor reporting that it could not locate the requested reports in its files. Pet. App. 85a & n.16. These determination letters are not mere duplications of agency records; they are, rather, the agency's own work product produced after—and in response to—receipt of the Kirks' FOIA requests. Pet. App. 83a-84a. The letters expressly state the agency's official "determination" based upon a "search of records" conducted by its "Investigation and Compliance Division."[22] The court below erred in concluding that these responses, and FOIA

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[21] See U.S. Department of Labor, Freedom of Information Act Annual Report for Fiscal Year 2008, http://www.dol.gov/sol/foia/2009anrpt.htm.

[22] SA 100 (FOIA response letter, dated February 11, 2005); SA 106 (FOIA response letter, dated September 29, 2005); see also SA 138 (FOIA response by e-mail dated May 14, 2007).

responses generally, do not trigger the public-disclosure bar.

II. The Drafting History of the False Claims Act Confirms that FOIA Responses Trigger the Public-Disclosure Bar.

The Second Circuit's statutory interpretation is inconsistent with the FCA's drafting history in at least two respects. First, it opens the door to qui tam actions by relators who have no independent knowledge of the alleged wrongdoing. Congress originally allowed such relators to bring qui tam actions but later chose to prohibit them from doing so because of the large number of parasitic suits. Second, the court of appeals viewed the public-disclosure bar's applicability as turning on whether the government is investigating the alleged fraud. But Congress considered and rejected that option; and instead intended the critical factor to be whether the relator's allegations were already in the public domain. Unless reversed, this decision will invite the very same abuses of the qui tam provisions that Congress enacted the public-disclosure bar to prevent.

A. Congress Intended to Prohibit Persons Lacking Firsthand Knowledge of Fraud from Bringing a Qui Tam Suit.

The FCA's drafting history confirms that a qui tam suit based on information learned through a FOIA request—of which the relator has no direct knowledge—is precisely the type of action that Congress sought to prohibit through § 3730(e)(4)(A). As that history shows, the overriding purpose of the

public-disclosure bar is to prevent qui tam actions by persons who lack firsthand knowledge of fraud.[23]

Congress added the public-disclosure bar to the FCA as part of a 1986 amendment to improve upon earlier qui tam provisions that had been, alternatively, too permissive and then too restrictive of private lawsuits.[24] When the FCA was originally enacted in 1863, it "did not limit the sources from which a relator could acquire the information to bring a qui tam action." *Graham County*, 130 S. Ct. at 1406. This resulted in widespread abuse of the qui tam provisions by profiteering relators who "contributed nothing to the discovery of [the] crime." *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 545-48 (1943). "Qui tam suits by individuals seeking quick cash without assisting in exposing the fraud were aptly characterized by Attorney General Biddle, in 1943, as 'parasitic' actions." *United States ex rel. Doe v. John Doe Corp.*, 960 F.2d 318, 321 (2d Cir. 1992).

To prevent these parasitic suits, Congress amended the FCA in 1943 to preclude *all* qui tam actions based on information already known to the

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[23] See, e.g., 132 Cong. Rec. S11238-04, 1986 WL 783415, at 20 (Aug. 11, 1986) (statement of Sen. Grassley); *Graham County*, 130 S. Ct. at 1406; *United States ex rel. Devlin*, 84 F.3d 358, 362 (9th Cir. 1996); *United States ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Prudential Ins. Co.*, 944 F.2d 1149, 1154 (3d Cir. 1991).

[24] See *United States ex rel. Springfield Terminal Ry.*, 14 F.3d 645, 649 (D.C. Cir. 1994) ("The past serves as prologue" for the FCA, whose "tortuous, wending history is critical to an understanding of the [1986] amendments to the *qui tam* provision.").

government.[25] But this "government knowledge" standard proved to be too broad.[26] It applied "even where the relator had independently uncovered fraud against the government and the government knew of [the] fraud only because the relator had been decent enough to tell the government about it." *Wang v. FMC Corp.*, 975 F.2d 1412, 1419 (9th Cir. 1992).

With the 1986 amendment to the FCA, Congress sought to achieve "the golden mean between adequate incentives for whistle-blowing insiders with genuinely valuable information and discouragement of opportunistic plaintiffs who have no significant information to contribute of their own." *Graham County*, 130 S. Ct. at 1408 n.16 (internal quotation marks omitted). As one part of this balance, Congress eliminated the government-knowledge bar and provided new incentives for relators with valuable information to blow the whistle on fraud.[27] At the

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[25] See Act of December 23, 1943, 57 Stat. 608, recodified in 31 U.S.C. § 3730(b)(4) (1982) (superseded).

[26] See, e.g., *Graham County*, 130 S. Ct. at 1406; S. REP. No. 99-345, at 11-13 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5276-78.

[27] The new incentives included increased monetary awards, a lower standard of proof, and enhanced relator participation following government intervention. See, e.g., S. REP. No. 99-345, at 13, 1986 U.S.C.C.A.N. at 5278; *United States v. Findley*, 105 F.3d 675, 683-84 & n.3 (D.C. Cir. 1997). The "theme recurring through the legislative history" of these added incentives "is the intent to encourage persons with firsthand knowledge of fraudulent misconduct to report fraud." *Stinson*, 944 F.2d at 1154.

same time, however, it added the public-disclosure bar to limit the class of persons who could benefit from these incentives in order "to minimize the potential for parasitic lawsuits by those who learn of the fraud through public channels." *Graham County*, 130 S. Ct. at 1408 n.16 (internal quotation marks omitted).[28] The decision below upsets the equilibrium created by Congress by removing the side of the balance preserved by the public-disclosure bar. Accordingly, it allows suits that Congress plainly intended to prohibit.

The Second Circuit was influenced by the opposite concern—that interpreting "report" and "investigation" to reach FOIA responses would be unduly restrictive of qui tam suits. What it found "most problematic" about this interpretation was that it supposedly would "resurrect, in a significant subset of cases, the government possession standard that Congress repudiated in 1986."[29] Pet. App. 27a-28a.

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[28] See also *Holmes*, 318 F.3d at 1206-07 (distinguishing legislative intent regarding the public-disclosure bar from Congress's anti-fraud objectives in the 1986 amendments); *Springfield*, 14 F.3d at 651 (contrasting the motives underlying Congress's "twin goals" of encouraging private-enforcement suits and "discouraging opportunistic behavior").

[29] The Second Circuit was also troubled that, if construed to reach FOIA responses, the bar might preclude suits by relators who utilized FOIA to obtain a "key piece of information" supporting the claim of fraud. Pet. App. 28a. But if the publicly disclosed information contains the relevant "allegations or transactions," then the relator "who obtain[ed] information through FOIA . . . is not a person with firsthand knowledge (and, thus, not a person whom

This concern was misplaced. The pre-1986 government-knowledge bar precluded even relators with *first-hand* knowledge of fraud from bringing qui tam claims. *Hughes Aircraft Co.*, 520 U.S. at 950. It was triggered whenever the government was aware of the relevant facts, regardless whether those facts were in the public domain. And it applied even to suits by "whistleblowers who furnished evidence or information to the government in the first place." *Findley*, 105 F.3d at 680, 683-84. Thus, a person with direct, inside information about misconduct—if known to the government but no other member of the public—had no incentive to come forward.

In contrast, the public-disclosure bar permits qui tam actions in those circumstances. It precludes suits "based on information that would have been equally available to strangers to the fraud transaction had they chosen to look for it." *Doe*, 960 F.2d at 322 (internal quotation marks omitted).[30] But because of the "original source" exception, it does not preclude a person with firsthand knowledge of a fraud who provided information to the government from bringing a qui tam action. See S. REP. No. 99-

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Congress chose to reward under the FCA)." *Ondis*, 587 F.3d at 86. Alternatively, if the FOIA disclosure does not contain the relevant "allegations or transactions," then the bar would not be triggered. There is no need to misconstrue "report" and "investigation" merely to ensure that persons with firsthand knowledge of fraud may bring qui tam actions.

[30] See also *Findley*, 105 F.3d at 675 ("Congress . . . changed the focus of the jurisdictional bar from evidence of fraud inside the government's overcrowded file cabinets to fraud already exposed in the public domain.").

345, at 4, 12-13, 1986 U.S.C.C.A.N. at 5269, 5277-78; *Findley*, 105 F.3d at 684 ("Congress wanted in 1986 what it apparently thought it had in 1943: a law requiring that the relator be the original source of the *government's* information.") (internal quotation marks omitted).

Interpreting the public-disclosure bar to reach FOIA responses is thus consistent with the FCA's drafting history and with the "golden mean" that Congress sought to achieve. The opposite interpretation is inconsistent with that drafting history because it permits relators to bring parasitic lawsuits of the kind that Congress amended the statute to prohibit.

B. Whether the Public-Disclosure Bar Applies Depends on What Information Is Publicly Available and Not on Whether the Government Is "on the Trail" of the Supposed Fraud.

The court of appeals found additional support for its decision from an understanding of the public-disclosure bar that was advocated by the government as *amicus curiae*. Pet. App. 30a ("our interpretation of § 3730(e)(4)(A) accords with that urged by the government"). The government argued that "the touchstone for application of the public-disclosure bar is whether the government is 'on the trail of [the alleged] fraud.'" Brief for *Amicus Curiae* the United States of America in Support of Appellant ("U.S. 2d Cir. Amicus Br.") at 18. As the Second Circuit explained, under this view, "citizen relators will be able to bring suit in those instances in which the govern-

ment itself is not pursuing, or considering the pursuit of, an investigation."[31] Pet. App. 30a.

But the "on the trail" standard relied on by the Second Circuit is simply not the one that Congress enacted and, in fact, is contrary to Congress's intent, as shown by the statutory text. Indeed, this Court rejected that very understanding of the public-disclosure bar just last term in *Graham County*, exactly one week before the Second Circuit issued its decision in this case. The government argued in *Graham County* that the now-superseded term "administrative" in § 3730(e)(4)(A) should be construed to reach only federal, not state, disclosures, because "the Attorney General is much less likely to learn of fraud disclosed in state proceedings." 130 S. Ct. at 1407. In support of this contention, the government advocated the same "on the trail" standard that it argued to the court below in this case.[32]

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[31] See also Pet. App. 30a (noting the government's argument that the bar applies only when the government "'is either actively investigating the alleged fraud or . . . there is sufficient public awareness of the allegations to pressure the government to start an investigation'") (quoting U.S. 2d Cir. Amicus Br. 18, 24-25).

[32] See Brief for the United States as Amicus Curiae Supporting Respondent, No. 08-304, at 27 ("In drafting Section 3730(e)(4)(A), Congress sought to identify the specific categories of public disclosures that provide the greatest assurance that federal officials are pursuing, or are likely to pursue, the fraud . . . ."); *id.* (arguing that Congress intended the public-disclosure bar to apply only "when the federal government already was, or was likely to be, on the trail of the fraud").

This Court explicitly rejected that view of § 3730(e)(4)(A): "The statutory touchstone . . . is whether the allegations of fraud have been 'publicly disclosed' not whether they have landed on the desk of a DOJ lawyer." *Graham County*, 130 S. Ct. at 1410 (citation and internal alterations omitted).[33] Yet, only one week later, the Second Circuit reached the contrary conclusion, expressly endorsing the government's understanding of the statute and commenting that "the forms of public disclosure that trigger the jurisdictional bar are all forms that can reasonably be expected to indicate that some branch of government has turned its attention to the potential fraud." Pet. App. 32a. As this Court noted in *Graham County*, however, the bar is triggered by disclosures in the "news media," which "likely describes a multitude of sources that would seldom come to the attention of the Attorney General." *Graham County*, 130 S. Ct. at 1410.

As *Graham County* suggests, the "on the trail" standard fails because it completely ignores the factor that Congress intended to be critical for application of the public-disclosure bar—whether the qui tam relator has direct, firsthand knowledge of fraud. The Second Circuit's reading of § 3730(e)(4)(A) incorrectly focuses on the activities of the *government* (whether it is pursuing a fraud investigation), see Pet. App. 31a-32a, when the focus properly should be on the contribution by the *relator* (whether he has

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[33] See also *Holmes*, 318 F.3d at 1204 ("Applicability of [the public-disclosure bar] does not hinge upon whether the government is actively involved in an investigation of the alleged fraud.").

independent knowledge of the allegedly wrongful conduct).

In looking to the government's action *vel non* to determine whether the public-disclosure bar applies, the court below effectively resurrected a legislative proposal that Congress considered but ultimately decided not to enact. As first reported out of committee, the Senate bill that would become the 1986 amendment to the FCA made the public-disclosure bar inapplicable if "the Government has failed to act within 6 months of the public disclosure."[34] S. REP. NO. 99-345, at 28, 1986 U.S.C.C.A.N. at 5293; see also 132 Cong. Rec. S9805-01, 1986 WL 792760, at 30 (text of bill). Thus, the *proposed* (but not the enacted) legislation would have allowed qui tam actions in the circumstances present here—when the action is based on publicly disclosed information of which the relator had no independent knowledge, but the government has not acted against the supposed fraud.

The Senate Report accompanying the proposed bill acknowledged that providing monetary recoveries to relators in these circumstances might be "inappropriate," but reasoned that the disadvantages of this approach would be offset by greater recoveries to the government through qui tam actions:

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[34] The companion bill introduced in the House of Representatives contained a similar restriction. See 132 Cong. Rec. H6474-02, 1986 WL 785922, at 30 ("H.R. 4827 . . . provides that the court shall permit the suit if the Government was aware of the information for 6 months and took no action.").

> The Committee recognizes that guaranteeing monetary compensation for individuals in this category could result in inappropriate windfalls where the relator's involvement with the evidence is indirect at best. However, ... [t]he Committee believes a financial reward is justified in these circumstances if but for the relator's suit, the Government may not have recovered.

S. REP. NO. 99-345, at 28, 1986 U.S.C.C.A.N. at 5293.

Thus, Congress considered—but ultimately *decided against*—making the FCA's considerable financial incentives available to relators merely to encourage them to bring qui tam cases that, for whatever reason, the government did not bring. The court of appeals, however, sought to enshrine that congressionally rejected policy as the interpretive standard for the public-disclosure bar, observing that relators "would bring their own resources to bear where the government was not in a position to act," and thus "maximize efficient enforcement of the FCA." Pet. App. 32a. The court suggested that "the authors of the 1986 amendments" approved of this use of qui tam actions, quoting from the Senate Report that "'the Committee believes only a coordinated effort of both the Government and the citizenry will decrease th[e] wave of defrauding public funds.'" Pet. App. 32a (quoting S. REP. NO. 99-345, at 2, 1986 U.S.C.C.A.N. at 5267).

The Second Circuit apparently overlooked that the Senate Report it relied on addressed a version of

the public-disclosure bar that was never enacted.[35] The final legislation did not—like the proposed bill discussed in the report—authorize "windfalls" to relators with only "indirect" knowledge of alleged fraud. Rather, it imposed a categorical bar on qui tam actions based on allegations that were publicly disclosed in enumerated sources, unless the relator is an original source of the information. The intent of this provision, as noted, was to preclude altogether qui tam actions when the relator has "no direct or independent knowledge." 132 Cong. Rec. S11238-04, 1986 WL 783415, at 20.

The legislative history does not reveal why Congress abandoned the provision allowing suits when the government did not act. It may simply have found too objectionable the "inappropriate windfalls" to relators that would have ensued. Or it may have been influenced by another consideration: The abandoned provision—like its modern reincarnation, the "on the trail" theory—would prompt relators to bring FCA claims even when the government has chosen not to bring them for sound reasons.

As a Department of Justice representative explained at a Senate subcommittee hearing on S.1562, "[t]here are several legitimate reasons why the Department might choose not to bring a civil action on

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[35] See *Graham County*, 130 S. Ct. at 1408 n.15 ("Because Section 3730(e)(4) was drafted subsequent to the completion of the House and Senate Committee reports on the proposed False Claims Act Amendments, those reports, which contained discussion of altogether different bars, cannot be used in interpreting it.") (internal quotation marks omitted).

the basis of information in its possession. . . . [T]he allegations may involve conduct which is not clearly improper, and hence, which the Department, in the exercise of its prosecutorial discretion, does not believe should be prosecuted."[36] But prosecutorial discretion is meaningless when any private party—even one with no independent knowledge of the defendant's conduct—can bring a qui tam action and claim the FCA's extraordinary bounties. See *Findley*, 105 F.3d at 685 ("Once the information is in the public domain, there is less need for a financial incentive to spur individuals into exposing frauds. Allowing qui tam suits after that point may . . . pressure the government to prosecute cases when it has good reasons not to . . . .").

Whatever Congress's reasons for discarding the proposal to allow private suits when the government did not act, there is no justification for reading that expansion into the statute years later. The Second Circuit's decision erroneously implements a standard that Congress considered and chose not to enact.

III. The Second Circuit's Interpretation of the Public-Disclosure Bar Will Have Far-Reaching and Damaging Consequences.

"Congress did not intend the qui tam provision to transform FOIA from sunshine legislation into a search for the pot of gold at the end of the rainbow." *United States ex rel. Herbert v. Nat'l Acad. of*

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[36] *False Claims Reform Act: Hearing on S. 1652 Before the Subcomm. on Admin. Prac. and Proc. of the S. Comm. on the Judiciary*, 99th Cong., 1st Sess. 20-21 (1985) (testimony of statement of Jay B. Stephens, Dep'y Assoc. Att'y Gen.).

Sciences, Civ. A. No. 90-2568, 1992 WL 247587, at *6 (D.D.C. Sept. 15, 1992). But that is what it has now become. In view of two antecedent factors—the treble damages and attorneys' fees available under the FCA and the "legally false certification" theory that allows FCA liability for regulatory noncompliance—permitting qui tam actions based on FOIA responses will spawn a cottage industry of opportunistic relators.

The *in terrorem* effect of such lawsuits might well compel settlements of even meritless actions for substantial amounts of money. The qui tam statute "carries with it the risk of parasitic suits brought by relators who add little in value but siphon off part of the government's recovery (or, in the case of a meritless claim that the government has chosen not to pursue, perhaps to coerce a settlement through the threat of expensive litigation)." *In re Natural Gas Royalties Qui Tam Litig.*, 566 F.3d 956, 960 (10th Cir. 2009). Of course, not every contractor will choose to settle, but those who do not face the specter of crippling damages awards.

The holding that FOIA responses do not trigger the public-disclosure bar greatly exacerbates this risk. By discarding the requirement that relators have firsthand knowledge of misconduct, it dramatically expands the universe of persons able to bring qui tam claims. Anyone can bring a qui tam action against any federal contractor based on FOIA responses alone—just as the district court found in this case that "the DOL's responses to the Kirks' FOIA requests served as Kirk's sole basis for concluding that Schindler failed to file VETS-100 reports." Pet. App. 85a n.16. Each one of those newly permissible

qui tam actions, even if frivolous, imposes further costs on those who do business with the government.

The brunt of these additional costs will not be born by federal contractors alone. Those contractors will respond as any rational business would—by either declining to provide goods and services to the government or, if possible, by passing along to the government the daunting costs of the anticipated litigation risks at the time a contract is entered. In either event, the upshot to the government will be the same: Its costs of doing business will rise because there will be less competition among contractors and because the contractors who remain in the market will insist upon a higher price. Cf. *Hughes Aircraft Co.*, 520 U.S. at 949 n.5 ("That a *qui tam* suit is brought by a private party 'on behalf of the United States' . . . does not alter the fact that a relator's interests and the Government's do not necessarily coincide.").

It is, of course, the public who ultimately must foot these bills, but the public will receive no commensurate benefit for its higher payments. FCA cases like this one seek to enforce regulatory requirements for which independent administrative enforcement schemes already exist and provide the government with ample tools to deal with noncompliant contractors.

This is not a case in which the defendant is accused of overbilling the government or misrepresenting the nature or quality of the goods or services that it provided. To the contrary, neither Kirk nor the government has ever contested that the elevators and escalators installed and maintained by Schindler were of premium quality and delivered at a fair

price. This case is purely about alleged regulatory infractions.

Congress has put in place specific administrative procedures and remedies to address claims of noncompliance with VEVRAA such as these, which can be initiated by both the Labor Department and by private individuals. There is no indication that the government has ever regarded these administrative tools as inadequate; as far as can be discerned, the government has never found it necessary to bring an FCA action to attempt to enforce VEVRAA. Kirk used VEVRAA's administrative process and accused Schindler of several VEVRAA violations. The Labor Department examined and rejected Kirk's claims, and upheld that determination upon administrative appeal. JA 106a-20a.

Not satisfied with this process, Kirk also resorted to the FCA to assert claims of noncompliance with VEVRAA. This is hardly surprising, for the remedies available in an administrative proceeding are not even remotely comparable to the windfall profit potentially available to Kirk from an FCA action. But that is precisely the problem. Given the choice, relators will always trundle out the heavy artillery of the FCA for even minor regulatory infractions, rather than addressing the issue through administrative procedures or other less drastic means. This will be true even when the government has made a considered judgment that the FCA's draconian penalties are too severe or unfair in relation to the gravity of an alleged infraction.

This capacity for qui tam relators to override exercises of prosecutorial discretion and displace administrative enforcement schemes is of far less con-

cern if qui tam actions are properly restricted to persons with firsthand knowledge of misconduct. In that event, except in isolated cases where true whistleblowers come forward, the government retains discretion to select the appropriate means and remedies to enforce regulatory requirements. But the tools given to relators become highly problematic if—contrary to Congress's intent—the firsthand knowledge requirement is eliminated from the statute, as occurred in this case. Then every regulatory infraction related to a government payment, if discoverable through public channels, becomes a likely target for a qui tam case. The government's discretion to address regulatory violations by civil or administrative enforcement mechanisms is overridden wholesale, not in isolated instances.

Unlike the government, "*qui tam* relators . . . are motivated primarily by prospects of monetary reward rather than the public good. . . . *Qui tam* relators are thus less likely than is the Government to forgo an action arguably based on a mere technical noncompliance with reporting requirements that involved no harm to the public fisc." *Hughes Aircraft Co.*, 520 U.S. at 949. Accordingly, relators will not be deterred by the fact that their conduct raises the government's costs of doing business or that the penalties they seek to impose on federal contractors are wildly disproportionate to the alleged infractions and are completely unnecessary to bring about acceptable levels of compliance. They will pursue solely their own, unmerited financial gain.

CONCLUSION

The Court should vacate the Second Circuit's judgment and remand for further proceedings.

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SCHINDLER ELEVATOR CORPORATION,

Petitioner,

—v.—

UNITED STATES OF AMERICA EX REL. DANIEL KIRK,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT

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(71)

QUESTION PRESENTED

Whether every response to a Freedom of Information Act request constitutes an "administrative report or investigation" under the 1986 version of the False Claims Act's public disclosure bar, regardless of the form or content of the response.

TABLE OF CONTENTS

PAGE

Question Presented i

Table of Contents ii

Table of Authorities iv

Statement of the Case 1

Summary of Argument 15

Argument—

I. NARROWER DEFINITIONS OF "REPORT" AND "INVESTIGATION" AVOID REDUNDANCY AND FIT THE CONTEXT OF THE FALSE CLAIMS ACT 20

A. Schindler's Proposed Definitions Are Too Broad and Lack Any Context 21

B. To Fit the Context of the False Claims Act, the Court Should Choose Narrower Definitions 27

C. The Second Circuit's Definitions of Report and Investigation Are Consistent with the Purpose of the Public Disclosure Bar 34

PAGE

II. THE LANGUAGE AND STRUCTURE OF FOIA DEMONSTRATE THAT AN AGENCY'S SEARCH AND RESPONSE ARE NOT REPORTS OR INVESTIGATIONS 39

A. FOIA Records are Routinely Disclosed with No Search or Response 40

B. The Term "FOIA Response" Is Not Listed in the Public Disclosure Bar 44

C. A FOIA Response Is Not a "Report" and a FOIA Search is Not an "Investigation" 46

D. Schindler's Categorical Rule Leads to Irrational Results 50

III. THE LETTERS AND VETS-100 REPORTS PRODUCED TO MRS. KIRK ARE NOT ADMINISTRATIVE REPORTS OR INVESTIGATIONS 54

A. The VETS-100 Reports Are Not "Administrative" 54

B. The Department of Labor Did Not Conduct an Investigation or Prepare a Report under FOIA or the False Claims Act 57

Conclusion 59

TABLE OF AUTHORITIES

Cases — PAGE

Am. Tobacco Co. v. Patterson, 456 U.S. 63 (1982) 21

Amnesty Int'l USA v. C.I.A., 2008 WL 2519908 (S.D.N.Y. June 19, 2008) 49

Assassination Archives & Research Ctr., Inc. v. C.I.A., 720 F. Supp. 217 (D.D.C. 1989) 49

Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 515 U.S. 687 (1995) 22

Bailey v. Callahan, 2010 WL 924251 (E.D. Va. Mar. 11, 2010) 49

Barber v. Thomas, 130 S. Ct. 2499 (2010) 32

Bilski v. Kappos, 130 S. Ct. 3218 (2010) 45

Breininger v. Sheet Metal Workers Int'l Ass'n Local Union No. 6, 493 U.S. 67 (1989) 24

Brown v. Gardner, 513 U.S. 115 (1994) 32

Carcieri v. Salazar, 129 S. Ct. 1058 (2009) 22

Chrysler Corp. v. Brown, 441 U.S. 281 (1979) 39-40

PAGE

Commissioner v. Brown,
380 U.S. 563 (1965) 23

Cook County, Ill. v. United States ex rel. Chandler, 538 U.S. 119 (2003) 37

Corley v. United States,
129 S. Ct. 1558 (2009) 26-27

Deal v. United States,
508 U.S. 129 (1993) 22

Dir., Office of Workers' Comp. Programs, Dept. of Labor v. Greenwich Collieries,
512 U.S. 267 (1994) 21, 29

Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist., 541 U.S. 246 (2004) 32

FDIC v. Meyer, 510 U.S. 471 (1994) 21

Fed. Open Mkt. Comm. of Fed. Reserve Sys. v. Merrill, 443 U.S. 340 (1979) ... 40

Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson,
545 U.S. 409 (2005) 22, 32, 34

Graham County Soil and Water Conservation District v. United States ex rel. Wilson,
130 S. Ct. 1396 (2010) ..... *passim*

Gustafson v. Alloyd Co., Inc.,
513 U.S. 561 (1995) 22, 25-26, 32

Hughes Aircraft Co. v. United States ex rel. Schumer, 520 U.S. 939 (1997) 37

PAGE

Johnson v. United States,
529 U.S. 694 (2000) 22

Kowalczyk v. U.S. Dep't of Justice,
73 F.3d 386 (D.C. Cir. 1996) 49

Leocal v. Ashcroft, 543 U.S. 1 (2004) 29

Neal v. Clark, 95 U.S. 704 (1877) 23

Overstreet v. N. Shore Corp.,
318 U.S. 125 (1943) 45

Perrin v. U. S., 444 U.S. 37 (1979) 45

Pillsbury v. United Engineering Co.,
342 U.S. 197 (1952) 22

Reiche v. Smythe, 80 U.S. 162 (1871) 23, 45

Reiter v. Sonotone Corp.,
442 U.S. 330 (1979) 21, 22

Reves v. Ernst & Young,
507 U.S. 170 (1993) 26

Richards v. United States,
369 U.S. 1 (1962) 21

Rockwell Int'l Corp. v. United States,
549 U.S. 457 (2007) 33

Shurberg Broad. of Hartford, Inc. v. F.C.C.,
617 F. Supp. 825 (D.D.C. 1985) 45

Smith v. United States,
508 U.S. 223 (1993) 32

Tennessee Valley Auth. v. Hill,
437 U.S. 153 (1978) 46

PAGE

Things Remembered, Inc. v. Petrarca, 516 U.S. 124 (1995) 51

TRW Inc. v. Andrews, 534 U.S. 19 (2001) 46

U.S. Dept. of State v. Ray, 502 U.S. 164 (1991) 39

Unexcelled Chem. Corp. v. United States, 345 U.S. 59 (1953) 34

United Savings Assn. of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365 (1988) 32

United States ex rel. Bondy v. Consumer Health Found., 28 F. App'x. 178 (4th Cir. 2001)..... 46

United States ex rel. Devlin v. State of Cal., 84 F.3d 358 (9th Cir. 1996) 36

United States ex rel. Doe v. John Doe Corp., 960 F.2d 318 (2nd Cir. 1992)..... 20

United States ex rel. Dunleavy v. County of Delaware, 123 F.3d 734 (3rd Cir. 1997)..... 12, 20

United States ex rel. Findley v. FPC-Boron Employees' Club, 105 F.3d 675 (D.C. Cir. 1997) 14, 36

United States ex rel. Grynberg v. Praxair, Inc., 389 F.3d 1038 (10th Cir. 2004) ... 53

PAGE

United States ex rel. Haight v. Catholic Healthcare West, 445 F.3d 1147 (9th Cir. 2006) 13, 35, 43

United States ex rel. Holmes v. Consumer Ins. Group, 318 F.3d 1199 (10th Cir. 2003) 12, 27

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United States ex rel. Ondis v. City of Woonsocket, 587 F.3d 49 (1st Cir. 2009)..... 13, 21, 42

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PAGE

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31 U.S.C. § 3730(c)(5) 5

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5 U.S.C. § 552(a) ..... *passim*

5 U.S.C. § 552(a)(2)(D) 41

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5 U.S.C. § 552(a)(3)(C) 41

5 U.S.C. § 552(a)(3)(D) 48

5 U.S.C. § 552(a)(4)(F) 47

5 U.S.C. § 552(a)(6)(A) 47

5 U.S.C. § 552(a)(6)(E) 44

5 U.S.C. § 552(e)(i) 47

PAGE

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6 C.F.R. § 5.6 55

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STATEMENT OF THE CASE

1. INTRODUCTION

Congress adopted the public disclosure bar of the False Claims Act "to strike a balance between encouraging private persons to root out fraud and stifling parasitic lawsuits."[1] This is not a parasitic lawsuit. Daniel Kirk worked at Schindler Elevator Corporation for many years. He knows firsthand that Schindler did not implement the policies and procedures required by its federal contracts. He knows that it did not gather the information necessary to submit truthful reports to the government. Mr. Kirk brought his concerns to the Department of Labor at a time when no agency was investigating the company.

To "root out" additional evidence of fraud, Mr. Kirk's wife, Linda, submitted FOIA requests to the Department of Labor. When the agency produced documents that Schindler filed to maintain its eligibility for federal contracts, Mr. Kirk knew that they were false. His inside knowledge of the company allowed him to see fraud that the government could not see.

In this action, Mr. Kirk alleges that Schindler submitted hundreds of false claims to federal agencies seeking payment for construction services when Schindler was not eligible for payment, and won new contracts when it was not eligible to bid. This illegal conduct obstructed the Government's efforts to enforce policies intended to pro-

[1] Graham County Soil and Water Conservation District v. United States ex rel. Wilson, 130 S. Ct. 1396, 1407 (2010) (hereinafter, "Graham County II").

mote the hiring and advancement of military veterans. It also deprived law-abiding contractors of a fair opportunity to compete for the Government's business.

This case arises at the intersection of the False Claims Act and the Freedom of Information Act. Congress wanted to encourage *qui tam* suits based not only on evidence unavailable to the government, but also on records gathering dust in government files. FOIA provides a mechanism for exhuming those records and making them available to the public. Working together, these laws create a powerful weapon in the war against fraud by government contractors.

Schindler asks the Court to disarm this weapon by inserting "FOIA response" into the list of sources that are subject to the public disclosure bar. This unwarranted revision would distort the statute and upset the balance designed by Congress. It would create an irrational system in which subject matter jurisdiction depends, for example, on whether an agency chooses to disclose records to the public before receiving a formal FOIA request. Most important, it would discourage citizens from using FOIA to uncover evidence of fraud.

The Second Circuit properly rejected this categorical ban on documents disclosed in response to FOIA requests. Instead, the court applied a fact-specific analysis, looking at each document produced by the Department of Labor to see if it disclosed information from one of the sources listed in the statute. This is the same approach that courts use whenever a defendant asserts that a *qui tam* complaint is based on publicly disclosed

allegations. It fits the text and the context of the statute. It preserves the balance designed by Congress and allows a genuine insider like Mr. Kirk to proceed with his action. It should be affirmed.

2. Mr. Kirk's Career at Schindler

Mr. Kirk is a Vietnam veteran who served in the Army from 1969 to 1975. In 1978, he took a job at Millar Elevator Industries, Inc. Starting as a mechanic, Mr. Kirk earned a master electrician's license. He became manager of the Repair and Maintenance Support Departments in 1990 with responsibility for supervising employees in and around New York City. He was promoted to Vice President of Millar in November 2001 and became responsible for additional personnel. *See* Joint Appendix ("JA") 49a.

Schindler bought Millar in 1989. The two companies operated separately until Schindler integrated Millar's operations into its own in 2002. Mr. Kirk then became Schindler's Regional Modernization Manager for New York City and Long Island.

Mr. Kirk's career at Schindler ended abruptly in 2003. In the spring, he heard rumors that he had been fired. Schindler then demoted him and changed his title in the company directory several weeks before he received notice of the demotion. The company apologized for this humiliation, but Mr. Kirk decided to resign in August 2003. Mr. Kirk soon found a new job in the elevator industry and has been employed ever since. JA 50a-51a.

3. Other Litigation

Because Schindler refused his request for a severance payment, Mr. Kirk filed suit in New York State court in late 2003. That action was removed to federal court and the severance claim was dismissed, but Mr. Kirk pursued other claims in state court. From late 2003 until 2006, Schindler refused to pay fines relating to city code violations; as a result, Mr. Kirk was unable to transfer his electrician's license to his new employer. The state court directed Schindler to pay those fines in 2006, and Mr. Kirk finally recovered his license. The court then dismissed his remaining claims. JA 51a-52a.

In 2004, Mr. Kirk filed a separate complaint with the Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP"), claiming that he had been improperly demoted and constructively terminated by Schindler in violation of the Vietnam Era Veterans Readjustment Assistance Act ("VEVRAA"), 38 U.S.C. § 4212. In 2005, OFCCP denied the complaint, finding that there was insufficient evidence to conclude that Mr. Kirk's demotion and termination from Schindler were motivated by his status as a Vietnam-era veteran. JA 53a. OFCCP affirmed that decision in 2009, but declined to address Schindler's general compliance with the Act. JA 118a.

4. False Claims Act Procedure

"Since its enactment during the Civil War, the False Claims Act has authorized both the Attorney General and private *qui tam* relators to recover from persons who make false or fraudu-

lent claims for payment to the United States." *Graham County II*, 130 S. Ct. at 1400. In 1986, Congress revised the Act to encourage whistleblowers to bring *qui tam* suits. At the same time, Congress adopted the public disclosure bar to preclude *qui tam* actions based on allegations of fraud that were publicly disclosed in a limited number of sources.

The Act imposes procedural requirements on relators that are designed to provide early notice to the Attorney General about alleged fraud. 31 U.S.C. § 3730(b). These procedures allow the Attorney General to review a *qui tam* complaint and the supporting evidence before the complaint is served on the defendant, and to decide whether to take over prosecution of the action. 31 U.S.C. § 3730(c)(1). If the Attorney General determines that the case should not proceed, he can dismiss or settle the action "notwithstanding the objections of the person initiating the action." 31 U.S.C. § 3730(c)(2). Moreover, the Attorney General is authorized to transfer any *qui tam* action out of court if he determines that the dispute is better suited to non-judicial resolution: "[T]he Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty." 31 U.S.C. § 3730(c)(5).[2]

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[2] These provisions fully resolve Schindler's purported concern that, if the Second Circuit is affirmed, "relators will displace administrative and statutory enforcement mechanisms put in place by Congress, effectively seizing control of enforcement decisions. . . ." *See* Brief for Petitioner ("Pet. Br.") at 3. The court of appeals addressed this issue in its

5. The Requirements of VEVRAA

Since the early 1970s, VEVRAA has required contractors (a) to adopt an affirmative action program for Vietnam-era veterans, (b) to offer its employees an invitation to identify themselves as Vietnam-era veterans separate from any other personnel form or questionnaire, and (c) to submit annual reports, known as VETS-100 reports, to the Department of Labor. 38 U.S.C. § 4212. Contractors must file a report for each "hiring location" that enters into a government contract covered by the law. 48 C.F.R. §§ 22.1310(b), 52.222-37.

In 1998, Congress enacted the Veterans Employment Opportunities Act, 31 U.S.C. § 1354, to prohibit any agency from obligating or expending funds for any fiscal year on a contract subject to VEVRAA with a contractor who failed to submit a VETS-100 report for that fiscal year. It was well established in 1998 that a knowingly false representation of compliance with a federal regulation or statute is actionable under the False Claims Act if, among other things, such compliance is a condition of payment by the government. By linking VEVRAA compliance to the government's payment decision, Congress made false representations of compliance actionable under the False Claims Act in cases where the contractor knowingly failed to comply with VEVRAA.

As the only report on contractors' hiring and firing of covered veterans, the VETS-100 report is an essential tool for enforcement of the law. The

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decision below. *See* Appendix to the Petition for Writ of Certiorari ("Pet. App.") 30a, n.9.

report is very simple. The official instructions state that the form can be completed in about 45 minutes, including the collection and review of data. *See* Supplemental Appendix ("SA") 209. The contractor merely needs to report the number of veterans it employs in certain types of jobs. To do that, the contractor must count its employees in the manner required by VEVRAA and its implementing regulations. Mr. Kirk alleges that Schindler never counted its employees. As the Second Circuit paraphrased the complaint, "the filed reports must be false because, as his personal experience demonstrated, Schindler never asked Vietnam-era veterans to self-identify." Pet. App. 10a.

6. Mr. Kirk's Personal Knowledge

As a manager with responsibility for hiring, promoting and firing employees, Mr. Kirk knew firsthand that Schindler did not count its covered veterans in New York or protect its veteran employees as required by VEVRAA. JA 49a. Although Mr. Kirk is a Vietnam veteran, Schindler never offered him an opportunity to identify himself as required by VEVRAA. He personally knew many veterans employed by Schindler who should have been counted in the VETS-100 reports. JA 59a-67a.

In addition, Mr. Kirk was familiar with Schindler's national policies and practices. He attended national conferences with other modernization managers and learned about Schindler's government contracting activities. JA 50a. As a result of these trips and other activities, Mr. Kirk knew that many Schindler facilities were

bidding for contracts and working on projects for various agencies of the federal government. He was also briefed on company personnel practices. "If Schindler had adopted an affirmative action plan for military veterans, or a process for employees to identify themselves as veterans, I would have known about it." *Id.*

Schindler hired approximately 400 Millar employees when the companies consolidated in 2002. Mr. Kirk was deeply involved in this integration of the two companies. He alleges that, in one striking example of non-compliance, "when Schindler integrated its operations with Millar's, the approximately 400 former Millar employees were not given an opportunity to self-identify as veterans." Pet. App. 7a.

7. The FOIA Requests and Disclosure of the VETS-100 Reports

In November 2004, at a time when the Kirks had no attorney, Linda Kirk submitted a FOIA request to the Department of Labor for copies of any VETS-100 reports filed by Schindler in 2002, 2003 or 2004. SA 99. DOL provided three redacted copies of VETS-100 reports dated September 30, 2004. SA 101-03. In a letter sent to Mrs. Kirk on February 20, 2005, DOL stated that it found no VETS-100 reports for the years 2002 or 2003. SA 100. One month later, Mr. Kirk filed his initial complaint.[3]

[3] The first two responses were handled by the Investigation and Compliance Division of DOL's Office of Veterans Employment and Training Service ("VETS"). This office is responsible for collecting VETS-100 reports from federal contractors. The name of the division does not imply that it con-

In January 2005, Mrs. Kirk submitted a second FOIA request to DOL for copies of any VETS-100 reports filed by Schindler for the years 1998 through 2001. SA 105. In September 2005, DOL responded that it had located no VETS-100 reports for the years 1998, 1999 or 2000. SA 106. The agency provided a collection of VETS-100 reports covering the 12-month period ending September 30, 2002. SA 107-34.

In April 2007, Mrs. Kirk submitted a third FOIA request to DOL for copies of any VETS-100 reports filed by Schindler for the years 2005 and 2006. SA 136-37. In May 2007, the agency sent an e-mail attaching copies of VETS-100 reports for the years ending September 30, 2005 and September 30, 2006. SA 138-206.

8. THE AMENDED COMPLAINT

Mr. Kirk filed an Amended Complaint in June 2007. He alleges that, beginning in 1999, Schindler failed to comply with the requirements of VEVRAA. JA 14a. As a result, many Vietnam-era veterans who were entitled to protection under VEVRAA found themselves fired or transferred by Schindler as they approached retirement age, as Schindler tried to avoid paying their pensions and other benefits. JA 48a.

The complaint alleges that Schindler knowingly failed to file the required VETS-100 reports for

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ducted an investigation in response to Mrs. Kirk's FOIA requests, as Schindler suggests. Pet. Br. 33. According to the DOL FOIA Report, VETS employed the equivalent of 1.02 full-time staff to handle 116 FOIA requests in 2009. *See* dol.gov/sol/foia/2010anrpt.htm.

any of its business units until late 2004. When Mr. Kirk brought this situation to the attention of the Department of Labor, Schindler filed false VETS-100 reports so that it would appear to be in compliance with VEVRAA and maintain its eligibility for government contracts. JA 14a-15a.

In his complaint, Mr. Kirk explains in detail why these reports are patently false. JA 34a. As the Second Circuit observed, these allegations are based on Mr. Kirk's personal knowledge: "Kirk alleges that from 1998 to the present, he was never asked to identify himself as a veteran and that when Schindler integrated its operations with Millar's, the approximately 400 former Millar employees were not given an opportunity to self-identify as veterans." Pet. App. 7a. Moreover,

> Kirk's allegation that Schindler's 2002, 2004, 2005, and 2006 VETS-100 reports were false was based on his comparison of the information contained in the reports produced pursuant to Mrs. Kirk's FOIA request with his personal knowledge of Schindler's operations. . . . He also alleged that while the 2004, 2005, and 2006 reports listed no covered veterans who are technicians or craft workers in New York, he personally knows (and named in the complaint) a number of covered veterans working for Schindler in those job categories.

Pet. App. 10a.

Since at least 1998, federal agencies have been barred from paying a contractor subject to VEVRAA who failed to submit a VETS-100 report. 31 U.S.C. § 1354. Despite that prohibition, Schindler falsely certified in its bids, contracts

and claims for payment that it was in compliance with VEVRAA. Schindler submitted bids and claims knowing that it was not eligible either to enter into contracts or to collect payments because it had not complied with the VETS-100 reporting requirement. Schindler also allowed itself to be listed as an eligible contractor by the Department of Labor, knowing that it had failed to file any VETS-100 forms or otherwise to comply with the requirements of VEVRAA. JA 37a-40a.

This action is not about inadvertently miscounting employees or misunderstanding complex regulations, as Schindler suggests. Pet. Br. 6, 9. The complaint alleges that Schindler deliberately filed false reports. JA 15a. Because Schindler did not ask Mr. Kirk or other employees to self-identify for purposes of VEVRAA, it did not have the information needed to submit reports stating the number of veteran employees. It could only file reports by *inventing the numbers*. Rather than telling the government that it could not comply with VEVRAA's reporting requirement, Schindler attempted to cover up its violations by filing the false reports attached to the complaint.

9. Proceedings Below

Schindler filed a motion to dismiss the Amended Complaint on September 4, 2007. Pet. App. 11a. The district court granted that motion in an opinion and order dated March 30, 2009. The court identified two separate claims for relief: the first claim alleges that Schindler violated the False Claims Act by certifying compliance with VEVRAA when in fact it had failed to file required VETS-100 reports, and the second claim alleges

that Schindler violated the False Claims Act when it filed false VETS-100 reports. The district court held that only the first claim stated a valid claim for relief. Pet. App. 64a-66a. The court then decided that this claim was barred by section 3730(e)(4)(A) because the FOIA responses constituted "public disclosure" of the alleged fraud and Mr. Kirk's claim was based on information in those responses. Pet. App. 79a-85a. The district court never considered whether the public disclosure bar applied to the second claim based on Schindler's false VETS-100 reports.

The Second Circuit reversed. On the public disclosure issue, the court laid out the generally accepted five-part test: the bar applies only if there is (1) "public disclosure" of the information (2) in one of the sources enumerated in the statute. The disclosure must include (3) the allegations or transactions of fraud (4) on which the relator's claim is based. Even if these points are established, the complaint will not be dismissed if (5) the relator was an "original source" of the relevant information. Pet. App. 14a.[4]

Concerning the first element of the test, the court of appeals observed: "[E]very circuit to have considered this issue has determined that information produced in response to a Freedom of Information Act request becomes public once it is received by the requester." Pet. App. 15a. The

[4] *See U.S. ex rel. Dunleavy v. County of Delaware*, 123 F.3d 734, 738 (3rd Cir. 1997) (applying same five-part test). Some courts use a four-part test, combining the second and third steps, but the analysis is the same. *See, e.g., U.S. ex rel. Holmes v. Consumer Ins. Group*, 318 F.3d 1199, 1203 (10th Cir. 2003).

court then moved to the second element of the test and concluded that the documents produced to Mrs. Kirk under FOIA were not "administrative reports or investigations." Pet. App. 33a.[5] The Second Circuit noted that "our sister Circuits have come to differing conclusions regarding whether materials produced by a government agency pursuant to a FOIA request are administrative reports or investigations within the meaning of the FCA's jurisdictional bar." Pet. App. 17a. After analyzing the leading decisions,[6] the court adopted a case-by-case approach: "we agree with the Ninth Circuit that whether a document obtained through a FOIA request is an enumerated source within the meaning of § 3730(c)(4)(A) depends on the nature of the document itself." Pet. App. 23a.

To reach this conclusion the court of appeals first looked at the statutory language. The words in the phrase "report, hearing, audit, or investigation" suggest "the synthesis of information in an investigatory context." Pet. App. 23a. Because very broad definitions of the words "report" and

[5] The Second Circuit also decided that the Amended Complaint properly stated two claims for relief under the False Claims Act. Pet. App. 43a-44a. That holding is not covered by the order granting certiorari here.

[6] *United States ex rel. Ondis v. City of Woonsocket*, 587 F.3d 49 (1st Cir. 2009); *United States ex rel. Haight v. Catholic Healthcare West*, 445 F.3d 1147 (9th Cir. 2006); *United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168 (5th Cir. 2004); *United States ex rel. Mistick PBT v. Hous. Auth. of Pittsburgh*, 186 F.3d 376 (3rd Cir. 1999).

"investigation" do not fit this context, the court decided to choose narrower definitions.[7]

Second, the court of appeals looked at how federal agencies respond to FOIA requests. The search for documents is sometimes "mechanistic" and sometimes substantive, but "what the agency does *not* do in such a case is synthesize the documents or their contents with the aim of itself gleaning any insight or information." Pet. App. 25a.[8] The process of making documents available to the public does not entail a governmental inquiry into alleged fraud, the type of inquiry covered by the public disclosure bar.

Third, the Second Circuit considered the legislative balance reflected in the public disclosure bar. While Congress wanted to preclude parasitic actions, it also "sought 'to prod the government into action' by allowing *qui tam* suits when 'evidence or information of fraud was buried somewhere in a government file.'" Pet. App. 27a (quoting *United States ex rel. Findley v. FPC-Boron Employees' Club*, 105 F.3d 675, 684, n.4 (D.C. Cir. 1997)). Because FOIA provides a mechanism that enables citizens to exhume information buried in government files, the court of appeals

[7] The court used the term "FOIA reports" in summarizing the district court's holding that the FOIA responses are administrative reports, Pet. App. 12a, not because FOIA responses are commonly understood as reports, as Schindler suggests. Pet. Br. 14.

[8] The court did not say that "FOIA responses involve only a 'mechanistic production of documents,'" as Schindler states. Pet. Br. at 30. It recognized that FOIA also requires a review of agency records, Pet. App. 25a, but held that such review is not an investigation under the False Claims Act.

determined that allowing relators to use documents obtained under FOIA is consistent with the purpose of the False Claims Act.

SUMMARY OF ARGUMENT

The "statutory touchstone" of the public disclosure bar is whether "allegations of fraud have been publicly disclosed." *Graham County II*, 130 S. Ct. at 1410. Congress provided that the bar is triggered only by allegations of fraud that are publicly disclosed in an "administrative . . . report, hearing, audit, or investigation" or one of the other listed sources. This is the context of the statute.

The categorical rule advanced by Schindler—that every FOIA response is a listed source—disregards this context. The statute provides an exclusive list of sources, but the list does not include "FOIA response." That term was familiar to Congress when the public disclosure bar was amended in 1986, but Congress did not include it in the public disclosure bar. This is not surprising, because most FOIA responses have nothing to do with "allegations of fraud."

The categorical rule is also inconsistent with the meaning of the words "report" and "investigation" as they are used in the public disclosure bar. These are common words, found in a variety of contexts, with numerous dictionary definitions. Schindler asks the Court to adopt the broadest possible definitions, but the rules of statutory construction demonstrate that this approach is mistaken. These broad definitions make the other words in the same phrase ("audit" and "hearing")

superfluous. They stretch the public disclosure bar beyond its context to cover any statement of fact on any subject that could possibly be called a "report."

The dictionary provides narrower definitions for these words: "investigation" means an official probe into some sort of crime or misconduct, and "report" means an official account of such an investigation. These definitions preserve the independent significance of all four words, including "audit" and "hearing," and they fit the context provided by the adjectives "congressional, administrative, or [GAO]." They also fit the way Congress used the word "investigation" throughout the False Claims Act. Under these definitions, the government's search and response to FOIA request is not an "administrative report or investigation."

The Second Circuit did not hold, as Schindler suggests, that "FOIA responses do not trigger the public disclosure bar." Pet. Br. 13. Instead, the court of appeals held that the question requires a case-by-case determination that "depends on the nature of the document itself." Pet. App. 23a. This is the same analysis that courts regularly use in *qui tam* cases to determine whether a whistleblower's complaint is subject to the public disclosure bar. The Second Circuit's holding is a fact-specific one: in some cases documents released under FOIA may contain allegations of fraud disclosed in one of the sources listed in the public disclosure bar, but the VETS-100 reports and cover letters provided to Mrs. Kirk do not.

The language and structure of FOIA strongly supports this case-by-case analysis. FOIA

responses come in an endless variety: an agency may provide a letter with a complex analysis of statutory exemptions, or it may produce documents with no explanation, no analysis and no cover letter. The documents may include formal agency determinations or, as here, routine corporate filings. It defies common sense to say that every FOIA response is an "administrative report" regardless of its form or content. Moreover, an agency's search for responsive documents is not an "administrative investigation." Numerous courts have held that an agency is not expected to conduct an investigation in response to a FOIA request. Indeed, FOIA defines "search" as a "review," which is not a synonym for investigation.

Schindler's categorical approach fails to recognize that many records are released under FOIA without a formal request. FOIA sets up a three-tier system in sections (a)(1), (a)(2) and (a)(3), and gives wide discretion to federal agencies to choose the best method of publication. In recent years, Congress and the president have encouraged federal agencies to publish documents proactively, without waiting for a request from the public. Only section (a)(3) requires agencies, in some circumstances, to search for documents or provide a response to the requesting party. Schindler's approach would bar a *qui tam* action based on a document disclosed under section (a)(3), but permit an action based on the same document disclosed under section (a)(2). False Claims Act jurisdiction would depend on the discretion of an agency FOIA officer who may decide to disclose a document proactively under section (a)(2), or to wait for a formal request under (a)(3).

The Second Circuit's approach solves this problem. When an agency makes a record available through FOIA, it satisfies the "public disclosure" element of the five-part test. In that respect, all documents released under FOIA are the same, and it makes no difference whether the agency conducted a search under section 552(a)(3) or simply directed the requester to a public reading room under (a)(2). However, the test requires a separate step to determine whether the records made available through FOIA contain allegations disclosed in one of the enumerated sources. The *method* of publication is not relevant to that question. Instead, the court must look at the *content* of the FOIA response and each document disclosed by the agency.

Here, Schindler's VETS-100 reports are not "administrative reports" because they were not created by a government agency. The nature of these documents did not change because they were produced in response to a FOIA request. Further, the VETS-100 reports were not disclosed in an "administrative investigation" because the agency's FOIA search was not an investigation within the meaning of either FOIA or the False Claims Act. The agency did not conduct "an official probe" into any fraud, crime or other misconduct. It merely took the necessary steps to review its records and to redact information as required by the Privacy Act. For the same reasons, the cover letters prepared by DOL in this case did not disclose information from an "administrative report or investigation" within the meaning of the False Claims Act.

The Second Circuit's holding furthers the intent of Congress, demonstrated by the 1998 enactment of the Veterans Employment Opportunities Act, 31 U.S.C. § 1354, to encourage the use of the False Claims Act to enforce VEVRAA. When a contractor falsely represents to the government that it has complied with important national policies—like VEVRAA's protection for military veterans—it cheats the government by providing services that do not meet the standards established by contract. It cheats other companies in the industry who have complied with those standards; they lose the contract to unfair competition. And it cheats American citizens who are entitled to the benefits of those policies as a matter of law. Here, those citizens are military veterans whose jobs and benefits were not protected by Schindler.

The complaint alleges that Schindler intentionally deprived its employees of their legal rights. Then, to avoid losing its federal contracts, Schindler knowingly filed false VETS-100 reports and fraudulent claims for payment. Only a genuine insider like Mr. Kirk could know that these claims were false. He used the Freedom of Information Act to uncover additional evidence of fraud because "I thought this is what a good whistleblower is supposed to do" before filing suit. JA 72a. He was right. The Court should hold that the False Claims Act does not categorically bar suits based on allegations of fraud disclosed in response to FOIA requests. The Second Circuit's case-by-case approach preserves the balance struck by Congress in the public disclosure bar, and encourages whistleblowers to use FOIA to root out evidence of fraud.

ARGUMENT

1. Narrower Definitions of "Report" and "Investigation" Avoid Redundancy and Fit the Context of the False Claims Act

As this Court recently explained, the public disclosure bar "deprives courts of jurisdiction over *qui tam* suits when the relevant information has already entered the public domain through certain channels." *Graham County II*, 130 S. Ct. at 1401. The statute "contains three categories of jurisdiction-stripping disclosures," as follows:

> No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions [1] in a criminal, civil, or administrative hearing, [2] in a congressional, administrative, or Government Accounting Office [(GAO)] report, hearing, audit, or investigation, or [3] from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

Id. (quoting 31 U.S.C. § 3730(e)(4)(A)). The three categories in the public disclosure bar are "exhaustive."[9] Disclosures in documents or proceedings other than the listed sources do not trigger the bar.

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[9] "Section 3730(e)(4)(A) furnishes an exclusive list of the ways in which a public disclosure must occur for the jurisdictional bar to apply." *United States ex rel. Doe v. John Doe Corp.*, 960 F.2d 318, 323 (2nd Cir. 1992); *Dunleavy*, 123 F.3d at 744; *United States ex rel. Williams v. NEC Corp.*, 931 F.2d 1493, 1499-1500 (11th Cir. 1991).

A. Schindler's Proposed Definitions Are Too Broad and Lack Any Context.

As in all cases involving statutory construction, "'our starting point must be the language employed by Congress,' and we assume 'that the legislative purpose is expressed by the ordinary meaning of the words used.'" *Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 337 (1979); *Richards v. United States*, 369 U.S. 1, 9 (1962)). When a word is not defined in the statute, the Court construes the term 'in accordance with its ordinary or natural meaning.'" *FDIC v. Meyer*, 510 U.S. 471, 476 (1994). "It is easier to state this task than to accomplish it, for . . . many words have several meanings even at a fixed point in time." *Dir., Office of Workers' Comp. Programs, Dept. of Labor v. Greenwich Collieries*, 512 U.S. 267, 272 (1994).

The task of finding the best ordinary meaning for "report" and "investigation" is complicated because they are common words with numerous definitions. In Webster's Third New International Dictionary, for example, there are eleven definitions for "report" as a noun. There are three definitions for "investigation," and they incorporate four definitions for "investigate." Other words at issue here—audit and hearing, search and response—are also common words with multiple definitions.[10]

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[10] *See* Webster's Third New International Dictionary (2002) (referred to herein as "Webster's"). This is the same edition cited in *Ondis*, 587 F.3d at 56. The definitions in the 1981 and 1993 editions are nearly identical to the definitions in the 2002 edition cited in this brief.

When choosing among possible meanings or dictionary definitions for a word, the Court must consider the context of the statute. It is a "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Deal v. United States*, 508 U.S. 129, 131-32 (1993). In selecting a definition, the Court should choose the one that best fits the text. *Johnson v. United States*, 529 U.S. 694, 706-07 (2000); *Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson ("Graham County I")*, 545 U.S. 409, 415 (2005) ("Statutory language has meaning only in context").

Three rules provide useful guidance as the Court chooses the most appropriate definition of "report" and "investigation" here. First, when Congress uses different words in the same sentence, it does not intend those words "to mean the same thing." *Pillsbury v. United Engineering Co.*, 342 U.S. 197, 199-200 (1952). Instead, a proper construction of a statute will preserve the "independent meaning" of each term. *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 702 (1995); *Graham County II*, 130 S. Ct. at 1403 (words in the public disclosure bar should be understood to have independent significance).

Second, "[w]e are obliged to give effect, if possible, to every word Congress used." *Reiter*, 442 U.S. at 339; *Carcieri v. Salazar*, 129 S. Ct. 1058, 1066 (2009). "The Court will avoid a reading which renders some words altogether redundant." *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 574-75 (1995).

Third, when a statute uses words with potentially very broad meanings, the Court has a "duty to restrict the meaning of general words, whenever it is found necessary to do so, in order to carry out the legislative intention." *Reiche v. Smythe*, 80 U.S. 162, 164 (1871); *Commissioner v. Brown*, 380 U.S. 563, 571 (1965) (courts may adopt restricted meanings for statutory words in some circumstances); *Neal v. Clark*, 95 U.S. 704, 709 (1877) (choosing narrow definition of "fraud" suggested by adjoining words). A narrow definition can solve the problem posed by the first two rules by preserving the independent meaning of each word and ensuring that all of them are effective. *United States v. Williams*, 553 U.S. 285, 294 (2008) (using *noscitur a sociis* to select narrow definitions for words based on their context).

Following *Mistick*, *Reagan* and *Ondis*, Schindler endorses a very broad definition of "report" as "something that gives information" or a "notification." Pet. Br. 19. This definition is based on two of the eleven definitions in Webster's dictionary: "2(a) Something that gives information: a usually detailed account or statement. 2(b) Notification." *See* Webster's at 1925. The problem with this broad definition of report is that it swallows up the other words in the phrase "report, hearing, audit, or investigation," making them redundant and superfluous. Each of these four words denotes "something that gives information." Indeed, the very purpose of holding a hearing, or conducting an audit or an investigation, is to obtain information, by interviewing witnesses, examining documents or studying financial records. Therefore, if

"report" is so broadly defined, all hearings, audits and investigations are reports.[11]

Schindler also chooses the broadest definition of "investigation" as a "detailed examination" or "the making of a search." Pet. Br. 20. This definition is based in part on a definition in Webster's: "(1) the action or process of investigating: detailed examination: study, research." *See* Webster's at 1189.[12] This broad definition makes the words "hearing" and "audit" superfluous because both are also defined as types of examination. The first definition of "audit" in Webster's is "a formal or official examination and verification of books of account." *Id.*, at 143. A hearing is generally understood as a proceeding for the examination of witnesses, and

[11] Moreover, construing "report" as a general term encompassing all notifications or statements of fact contravenes the doctrine *ejusdem generis*: general words in a series are construed to embrace only objects similar to the specific words. "If the general words are given their full and natural meaning, they would include the objects designated by the specific words, making the latter superfluous." 2A N. Singer, Sutherland Statutes and Statutory Construction § 47:17 (7th ed. 2007). *See United States v. Stever*, 222 U.S. 167, 174 (1911) (construing general term "schemes" in light of words describing specific lottery-related schemes); *Breininger v. Sheet Metal Workers Int'l Ass'n Local Union No. 6*, 493 U.S. 67, 91-92 (1989) (choosing narrow definition suggested by specific terms listed in statutory phrase).

[12] However, the phrase "the making of a search" is not found in Webster's. The phrase comes from the Compact Edition of the Oxford English Dictionary. *See Mistick*, 186 F.3d at 384. As explained in Point II below, the definition of "search" that fits the context of FOIA—where search is defined as a "review"—is not a synonym of investigation. *See* Black's Law Dictionary (5th ed. 1979) at 740 (defining "investigate" as "to search into").

Webster's defines "hearing" as (among many other things) "a preliminary examination in criminal procedure." *Id.*, at 1044.

If the words "report" and "investigation" have the meanings attributed to them by Schindler, then Congress could have dropped the words "audit" and "hearing" from the public disclosure bar. The resulting phrase would still cover every *examination* to gather information and every *statement* or *notification* now covered by the statutory phrase "congressional, administrative, or [GAO] report, hearing, audit, or investigation." This is so because the broadest definition of "report" includes "audit," "hearing" and "investigation" as subsets or specific types of report, and the broadest definition of "investigation" includes "audit" and "hearing" as subsets or specific types of investigation.[13]

This problem is the same one confronted by the Court in construing another common word with broad meaning—communication:

> If "communication" included every written communication, it would render "notice, circular, advertisement, [and] letter" redundant, since each of these are forms of written communication as well. Congress with ease could have drafted § 2(10) to read: "The term

[13] Schindler does not justify its choice of definitions or even acknowledge that the same dictionary cited in *Mistick* and *Ondis* offers numerous alternatives. *See* P. Rubin, *War of the Words: How Courts Can Use Dictionaries Consistent with Textualist Principles*, 60 Duke L.J. 167, 194-5 (2010) (proper use of dictionaries requires acknowledgement of alternative definitions and argument to show why one definition is superior to others).

> 'prospectus' means any communication, written or by radio or television, that offers a security for sale or confirms the sale of a security." Congress did not write the statute that way, however, and we decline to say it included the words "notice, circular, advertisement, [and] letter" for no purpose.

Gustafson, 513 U.S. at 574-75. Similarly, in *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993), the Court considered the meaning of the phrase "to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs" in section 1962(c) of the RICO statute. The Court rejected petitioner's broad definitions of "conduct" and "participate" because, in each case, the word "would be superfluous" unless given a narrower definition. "It seems that Congress chose a middle ground, consistent with a common understanding of the word. . . ." *Id.*

In sum, Schindler's construction of "report" and "investigation" in the public disclosure bar fails for three related reasons. It takes the words chosen by Congress (report, hearing, audit and investigation) and makes them mean the same thing. It disregards the narrower definitions available for the same words (in the same dictionary) that preserve their distinct meanings—what the Court in *Reves* called the "middle ground" definition. And it is "at odds with one of the most basic interpretive canons, that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignif-

icant." *Corley v. United States*, 129 S. Ct. 1558, 1566 (2009) (internal quotation marks omitted).[14]

B. To Fit the Context of the False Claims Act, the Court Should Choose Narrower Definitions.

Webster's provides narrower definitions of "report" and "investigation" that allow the four words in the phrase "report, hearing, audit or investigation" to retain their independent significance. Moreover, the word "investigation" is used repeatedly in the False Claims Act in a way that further clarifies its meaning.

1. The Appropriate Definition of Report

Among the eleven definitions of "report" in Webster's is the following: "4(b). A usually formal account of the results of an investigation given by a person or group authorized or delegated to make the investigation." *See* Webster's at 1925. This definition fits the context of the public disclosure bar far better than Schindler's generic definition of "report" ("something that gives information" or a "notification") for at least two reasons. First, it

[14] Schindler suggests the public disclosure bar must be "strictly construed," as if the rules of statutory construction were different when subject matter jurisdiction is at stake. Pet. Br. 18 (mistakenly citing the dissenting opinion in *Holmes*, 318 F.3d at 1216). This Court has not adopted that view in any case construing this statute. *See* A. Scalia, *A Matter of Interpretation: Federal Courts and the Law*, at 23 (Princeton Univ. Press, 1997) ("A text should not be construed strictly, and it should not be construed leniently; it should be construed reasonably, to contain all that it fairly means").

defines the word "report" by referring to another word in the public disclosure bar—"investigation" —while preserving the independent meaning of each word, so "report" in Webster's definition 4(b) has the same context as "report" in the public disclosure bar. Second, unlike Schindler's vague definition, Webster's definition 4(b) fits the adjectives "congressional, administrative, or [GAO]" in the public disclosure bar. It recognizes the familiar process used by Congress and government agencies: (i) a person or group is authorized or delegated to make an investigation, (ii) the authorized people conduct the investigation, and (iii) when they have finished, they issue "a formal account of the results" of the investigation.

This definition protects the independent significance of the four terms (report, hearing, audit and investigation) by clarifying that "report" means an account that *follows* steps taken by governmental entities to uncover facts. An "audit," for example, is defined as "a formal or official examination and verification of books of account (*as for reporting* on the financial condition of a business at a given date)." *See* Webster's at 143 (emphasis added). The report is the oral or written statement that follows the audit and provides its results. (The first example provided for Webster's definition 4(b) of "report" is "an audit report." *Id.* at 1925.) Similarly, Webster's defines "hearing" as a proceeding commonly used by governmental entities to uncover facts: "2(c). A session (as of a congressional committee) in which witnesses are heard and testimony is taken." *Id.* at 1044. The committee then generates a report stating the results of the hearing.

Thus, the context-specific definition of "report" comports with the way the word is used by people who are familiar with governmental audits, hearings and investigations. *Cf. Greenwich Collieries*, 512 U.S. at 275-76 ("We . . . presume Congress intended the phrase to have the meaning generally accepted in the legal community at the time of enactment"). When a statute uses a word that is ambiguous or "elastic," the Court construes the word "in its context and in light of the terms surrounding it." *Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004). A definition that fits the specific context of a statute is clearly preferable to a generic definition lacking any context at all.

2. The Appropriate Definition of Investigation

Webster's also provides a definition of "investigation" that fits the context of the public disclosure bar. That definition is an "official probe." *See* Webster's at 1189. Further, the dictionary defines "investigation" as "the action or process of investigating," and then defines the transitive verb "investigate" as "to subject to an official probe." *Id.* The three examples of this definition demonstrate its governmental context: (i) "investigate a crime," (ii) "investigate marine casualties," and (iii) "the FBI investigates every applicant for federal employment." *Id.* This is the context of the word in the public disclosure bar, as demonstrated by the adjectives "congressional, administrative, or [GAO]." Schindler's proposed definition of investigation as a "detailed examination" or "the making of a search" lacks any governmental context. Pet. Br. 20.

Because this definition of "investigation" is based on a transitive verb, it has an object. Something or someone is investigated. By emphasizing that an investigation has a *target*, this definition allows "investigation" to fit squarely with "audit" and "hearing" without trampling on either of them. While an audit examines financial records and a hearing examines witnesses, an investigation is an official probe *into* some kind of malfeasance. Again, Schindler's generic definition misses this common aspect of governmental investigations.

In *Graham County II*, the Court recognized that the public disclosure bar is focused on the disclosure of *fraud*, and held that the terms in the statute should be construed in that context: "When used to modify the nouns 'report, hearing, audit, or investigation,' in the context of a statutory provision about 'the public disclosure' of fraud on the United States, the term is most naturally read to describe the activities of governmental agencies." 130 S. Ct. at 1402.[15] The statute

[15] This holding refutes Schindler's contention that the four nouns in this phrase lack any "shared core of meaning." Pet. Br. 28. Each is part of the government's ongoing effort to fight fraud. Schindler also defends its context-free definitions by arguing that Congress included the phrase "news media" in the public disclosure bar, and that phrase lacks any governmental context. Pet. Br. 27. *Graham County II* considered "news media" in holding that the statute is not limited to federal information, but nothing in that decision implies that only the broadest definitions are appropriate for other words in the statute. On the contrary, Schindler's argument begs the question why the False Claims Act uses the phrase "news media" rather than the broader term "media." Clearly Congress intended to limit the statute to those sources where allegations of fraud are most often found.

refers to the disclosure of "allegations and transactions"—not merely information—because these are the elements of an investigation into fraud. This context demonstrates that "investigation" in the public disclosure bar is most reasonably understood as "an official probe into fraudulent conduct."[16]

3. The False Claims Act's Use of "Investigation"

This definition also fits the specific meaning of "investigation" as it is used in other parts of the False Claims Act. The Act requires the Attorney General to investigate violations of section 3729. 31 U.S.C. § 3730(a). The statute refers to "the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts." *Id.*, § 3730(c)(4). It then describes this investigation as a "criminal or civil investigation." *Id.* Clearly, the False Claims Act does not use the word "investigation" to mean a "detailed examination" or "search," as Schindler suggests. The Department of Justice does not examine or search

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[16] Schindler repeatedly suggests that the False Claims Act is concerned with disclosure of "information" rather than "allegations and transactions" related to fraud. Pet. Br. 1, 2, 12, 14. On the contrary, even relevant information does not trigger the public disclosure bar unless it reveals the fraud. "[T]he public disclosure bar is not triggered by *evidence*, but by *allegations*." J. Boese, *Civil False Claims and Qui Tam Actions*, at 4-65 (3rd ed., 2010) (original emphasis). At one point, Schindler concedes that "report" and "investigation" must be construed in light of the "public disclosure of allegations or transactions," Pet. Br. 29, but that advice is ignored in its discussion of the proper definitions for those words. *Id.* 18-22.

allegations of criminal or civil misconduct. It conducts a targeted probe into such allegations to determine whether someone has broken the law.

The "normal rule of statutory construction" is that "identical words used in different parts of the same act are intended to have the same meaning." *Gustafson*, 513 U.S. at 570 (internal quotation marks omitted).[17] There is a "presumption that a given term is used to mean the same thing throughout a statute." *Barber v. Thomas*, 130 S. Ct. 2499, 2506 (2010) (quoting *Brown v. Gardner*, 513 U.S. 115, 118 (1994)). Moreover, a provision that may seem ambiguous in isolation is often clarified by the remainder of the statute because the same term is used elsewhere in a context that makes its meaning clear. *United Savings Assn. of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). "Just as a single word cannot be read in isolation, nor can a single provision of a statute." *Smith v. United States*, 508 U.S. 223, 233-34 (1993).

The Court used the same reasoning in *Graham County I* when it adopted a narrow construction of the phrase "action under section 3730" in the False Claims Act. 545 U.S. at 418. In section 3730, "Congress sometimes used the term to refer only

[17] In *Gustafson*, the Court rejected a reading of the Securities Act that "would require us to hold that the word 'prospectus' in § 12 refers to a broader set of communications than the same term in § 10." 513 U.S. at 572. Statutes "should not be read as a series of unrelated and isolated provisions." *Id.* at 570; *see also Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 253 (2004) (selecting definition of "standard" consistent with its use in other parts of Clean Air Act).

to a subset of § 3730 actions. It is reasonable to read the same language in § 3731(b)(1) to be likewise limited." *Id.* Similarly, in *Graham County II*, the Court stated: "If the Court of Appeals was correct that the term 'administrative' encompasses state and local sources in Category 1, it becomes even harder to see why the term would not do the same in Category 2." 130 S. Ct. at 1402. *See also Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 472 (2007) (holding that "information" has the same meaning in two section of the public disclosure bar).

When Congress used "investigation" to refer to the Attorney General's "criminal or civil investigation," it was using the ordinary meaning provided by Webster's as "an official probe." Moreover, when it required the Attorney General to conduct an investigation "of a criminal or civil matter arising out of the same facts," Congress made clear that an investigation has a target. This is the meaning of "investigation" that best fits the entire False Claims Act, and there is no reason to believe that the same word has a different meaning in the public disclosure bar. On the contrary, if Congress had intended to give "investigation" a different meaning in section 3730(e) than it has in section 3730(c), "that is when one would have expected Congress to have been explicit." *Gustafson*, 513 U.S. at 573.

C. The Second Circuit's Definitions of Report and Investigation Are Consistent with the Purpose of the Public Disclosure Bar.

"Arguments of policy are relevant when . . . there are ambiguities in the legislative language that must be resolved." *Unexcelled Chem. Corp. v. United States*, 345 U.S. 59, 64 (1953). A statute is considered "ambiguous because its text, literally read, admits of two plausible interpretations." *Graham County I*, 545 U.S. at 419, n.2. Because the definitions proposed in Point I(B) above are ordinary, natural definitions for "report" and "investigation" that fit the context of the public disclosure bar, the Court does not need to examine the statute's purpose. However, if these definitions are not sufficient to resolve the ambiguity, then it is appropriate to consider legislative intent.

Both the Second Circuit and the Ninth Circuit correctly concluded that congressional intent supports narrow definitions of "report" and "investigation." The courts used *noscitur a sociis* to construe the phrase "congressional, administrative, or [GAO] report, hearing, audit, or investigation."[18] For example, the Ninth Circuit stated:

[18] This Court did not hold in *Graham County II* that *noscitur a sociis* is "an unreliable guide to the public disclosure bar's meaning," as Schindler contends. Pet. Br. at 15, 27. The Court merely found that the canon was not helpful in construing the phrase "congressional, administrative, or [GAO]." 130 S. Ct. at 1403. The Second Circuit carefully followed *Graham County II* in applying the canon to the longer phrase "report, hearing, audit or investigation." Pet. App. 24a, n.6.

> [R]eports and investigations generally involve independent work product. "Report" denotes a document that includes an analysis of findings; "investigation" implies independent governmental leg-work. Moreover, the FCA's jurisdictional bar groups "report" and "investigation" with a series of other enumerated sources that each involve extensive governmental work product and involvement.

Haight, 445 F.3d at 1153. The Court then turned to the history of the 1986 amendments to the False Claims Act and concluded: "the jurisdictional bar provisions 'must be analyzed in the context of these twin goals of rejecting suits which the government is capable of pursuing itself, while promoting those which the government is not equipped to bring on its own.'" *Id.* (quoting *U.S. ex rel. Springfield Terminal Ry. Co. v. Quinn*, 14 F.3d 645, 651 (D.C. Cir. 1994)). The Ninth Circuit concluded that these goals were best served by choosing narrower definitions of "report" and "investigation" applicable to circumstances where the government is engaged in extensive "leg-work" and analysis of its findings.

In its decision below, the Second Circuit relied on *Williams*, 553 U.S. at 294, to select narrow definitions that fit the statutory context:

> All of the other terms in the list of enumerated sources connote the synthesis of information in an investigatory context. "[C]riminal, civil, [and] administrative hearings," for instance, all entail a government inquiry into a given subject, here into an alleged case of fraud. Similarly, government "hearing[s and] audit[s]" are processes by

> which information is compiled with the concerted aim of deepening a government entity's knowledge of a given subject or, often, determining whether a party is in compliance with applicable law.

Pet. App. 23a.[19] The Second Circuit then examined the legislative history for the 1986 amendments and concluded that Congress intended to encourage more suits by private whistleblowers. In particular, the legislators sought "'to prod the government into action' by allowing *qui tam* suits when 'evidence or information of fraud was buried somewhere in a government file.'" Pet. App. 27a (quoting *Findley*, 105 F.3d at 684, n.4).

Schindler argues that Congress decided in 1986 to prohibit "actions by relators who have no independent knowledge of the wrongdoing." Pet. Br. 34.[20] This is a plain misreading of the statute. Schindler's discussion of "drafting history" disre-

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[19] Schindler misconstrues the Second Circuit's holding when it argues that the application of the public disclosure bar should not depend on whether an agency conducted a "sustained inquiry" in responding to a FOIA request. Pet. Br. 21-22. The court of appeals held that a FOIA search is not the type of inquiry that constitutes an "administrative investigation," so the jurisdictional issue turns on the nature of the documents provided under FOIA, not on the extent of the agency's search.

[20] The cases cited by Schindler emphasize the need for "firsthand knowledge of fraud" because the courts had to decide whether the relators were original sources with "direct and independent knowledge." Pet. Br. at 35 (citing *United States ex rel. Devlin v. State of Cal.*, 84 F.3d 358 (9th Cir. 1996); *United States ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Prudential Ins. Co.*, 944 F.2d 1149 (3rd Cir. 1991)). That question is not presented here.

gards the fact that the public disclosure bar applies only to actions that are based on allegations disclosed in a few specific sources. *Id.* 15, 34-39. The statute does not limit the "class of persons" who can bring suit. *Id.* 37.[21] It permits actions by people with "direct and independent knowledge" of the fraud *and anyone else* who discovers fraud that is not disclosed in one of the enumerated sources. 31 U.S.C. § 3730(e)(4). The statute could have been written so that only an "original source" could file suit, but that is not what Congress chose to do.

"Because Congress was concerned about pervasive fraud in all Government programs, it allowed private parties to sue even based on information already in the Government's possession." *Cook County, Ill. v. United States ex rel. Chandler*, 538 U.S. 119, 133 (2003) (internal quotations omitted). The public disclosure bar creates a narrow *exception* to this rule by prohibiting suits based on allegations of fraud that were publicly disclosed in one of the enumerated sources. *Hughes Aircraft Co. v. United States ex rel. Schumer,* 520 U.S. 939, 946 (1997). But this exception must not be per-

[21] Several *amici* state this misguided position explicitly when they argue that the public disclosure bar should be construed to cover FOIA responses "so that only a relator who qualifies as an original source of the allegations can litigate on the government's behalf." *See* Brief *Amici Curiae* of the Chamber of Commerce of the United States of America, *et al.*, at 6. In any event, Schindler's argument has no bearing on this case because Mr. Kirk has personal knowledge of the company's misconduct. Ignoring the undisputed facts in Mr. Kirk's affidavit, JA 47a-72a, Schindler carefully contends that he lacks knowledge only of the company's "reporting practices." Pet. Br. 2, 8.

mitted to swallow the rule: a stranger to the fraud may bring a *qui tam* suit based on allegations known to the government, except in the specific circumstances described in the statute.[22]

The Second and Ninth Circuits' case-by-case approach is consistent with congressional intent. It permits suits based on most information known to the government while prohibiting only those suits based on allegations disclosed "in a congressional, administrative, or [GAO] report, hearing, audit, or investigation" and the other listed sources. Moreover, the analysis built on *noscitur a sociis* and congressional intent leads to the same result as a plain-language analysis based on Webster's dictionary and the text of the statute. Both approaches support a narrow construction of "report" and "investigation" in the public disclosure bar. The Second Circuit held that the phrase "administrative investigation" is best understood to refer to a "government inquiry into a given subject," especially "an alleged case of fraud." Pet. App. 23a. This is what Webster's calls an "official probe," the definition that best fits the meaning of "investigation" in other parts of the False Claims Act. The Second Circuit held that "administrative report" refers to the "information compiled" in such an inquiry or probe. *Id.* This is what Web-

[22] Schindler is concerned that relators' use of FOIA "opens the floodgates to opportunistic suits." Pet. Br. at 23. It is true that Congress has expanded the scope of FOIA in recent years, and the president has encouraged proactive disclosure. *See* Point II(A) below. These changes could result in more *qui tam* suits against contractors who file fraudulent reports, but that does not mean that this Court should construe the False Claims Act to counteract the pro-disclosure policies of the other two branches.

ster's calls the "formal account of the results of an investigation."

The Court should reject the overly broad definitions of "report" and "investigation" proposed by Schindler, and adopt instead the ordinary meanings that fit the context of the public disclosure bar.

II. The Language and Structure of FOIA Demonstrate that an Agency's Search and Response are not Reports or Investigations

As noted above, this case arises at the intersection of two statutes, the False Claims Act and the Freedom of Information Act. In particular, the issue before the Court concerns the application of the False Claims Act to two administrative processes created by FOIA: the search for records and the response to the requesting party. The language and structure of FOIA strongly support the conclusion that these processes are not "administrative reports or investigations."

"The Freedom of Information Act was enacted to facilitate public access to Government documents." *U.S. Dept. of State v. Ray*, 502 U.S. 164, 173 (1991) (purpose of the Act requires a "strong presumption in favor of disclosure"). FOIA also facilitates access to records prepared and filed by private parties, including federal contractors like Schindler. Even in that context, "the basic objective of the Act is disclosure." *Chrysler Corp. v. Brown*, 441 U.S. 281, 290 (1979).[23] The Court

[23] *Chrysler* also concerned a contractor's reports of compliance with affirmative action laws regulated by the

should be wary of any construction of the public disclosure bar that discourages citizens from using FOIA to uncover information about federal contractors, or disfavors the use of such information as evidence in *qui tam* suits.

A. FOIA Records are Routinely Disclosed with No Search or Response.

FOIA begins with a simple directive: "Each agency shall make available to the public information as follows." 5 U.S.C. § 552(a). The statute requires each agency to adopt a three-tiered system to carry out this directive.[24] The first tier, under section (a)(1), requires agencies to publish many types of documents in the Federal Register. The second tier, under section (a)(2), requires agencies to make many other documents "available for public inspection and copying" in a reading room open to the public or, since 1996, on a website or "other electronic means." This section requires publication of documents previously disclosed under FOIA that the agency

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Department of Labor. 441 U.S. at 286. As here, the contractor protested that making such reports public under FOIA would damage national business interests and DOL's compliance efforts, in part because individuals could use the reports to sue contractors. *Chrysler v. Brown*, Brief of Petitioner, 1978 WL 206755 at *25-27. Schindler's argument fails to note that Congress decided to make fraudulent non-compliance with VEVRAA actionable under the False Claims Act, 31 U.S.C. § 1354, and that such non-compliance is unfair competition that harms law-abiding contractors.

[24] E. Fraser, *Reducing Fraud against the Government: Using FOIA Disclosures in Qui Tam Litigation*, 75 U. Chic. L. Rev. 497, 510 (2008). *See Fed. Open Mkt. Comm. of Fed. Reserve Sys. v. Merrill*, 443 U.S. 340, 352 (1979) (describing three methods of publication).

expects to be requested again. 5 U.S.C. § 552(a)(2)(D). Finally, the statute provides a third tier for documents that are *not* disclosed under (a)(1) or (a)(2). Each agency is required to make such documents "promptly available" upon request, 5 U.S.C. § 552(a)(3)(A), unless they fall into one of the exemptions listed in section 552(b). Section 552(a)(3) is the only part of FOIA that requires a "request for records." The government discloses countless documents pursuant to sections 552(a)(1) and (a)(2) without any request.[25]

Further, the statute requires the agency to conduct a "search" only if it receives a proper request and determines that the responsive documents have not been "made available" by publication in the Federal Register or a reading room or by posting on the Internet. 5 U.S.C. §§ 552(a)(3)(A), (C). If the requestor seeks records that are already available to the public, or if the request itself is deficient, the agency may make records available to the requester, but it is not required to conduct a search. Thus, a FOIA response that describes the search and provides copies of records directly to a requesting party—like the letters sent by the Department of Labor to Mrs. Kirk—is not a nec-

[25] U.S. Dept. of Labor, Freedom of Information Act Guide, Sec. II (many records are available in reading rooms and electronically; "you will not need to make a FOIA request to obtain these documents"). *See* M. Herz, *Law Lags Behind: FOIA and Affirmative Disclosure of Information*, 7 Cardozo Pub. L. Pol'y & Ethics J. 577, 587-88 (2009) (noting that Congress has moved FOIA away from the "request-driven" model to one based on agencies anticipating public interest and making records available online without a request).

essary step in a FOIA disclosure. It happens only in specific circumstances defined by the statute.

This overview of FOIA demonstrates two points that are essential to the proper application of the False Claims Act's public disclosure bar. First, FOIA is a vehicle for making documents available to the public. Publication pursuant to 552(a)(1), (2) or (3) satisfies the first part of the test: the document that was "buried somewhere in a government file" becomes public upon release under FOIA. *See* Pet. App. 27a; *Ondis*, 587 F.3d at 55 ("[A] response to a FOIA request is an act of public disclosure because the response disseminates (and, thus, discloses) information to members of the public (and, thus, outside the government's bailiwick)").

Second, FOIA disclosure does not entail a "search" or "response" by the agency, except in the specific circumstances described in section (a)(3).[26] Schindler misses this point when it contends that "[t]o respond to a FOIA request, an agency must search its records for responsive documents and then analyze those documents to determine whether any of FOIA's nine exemptions to disclosure apply." Pet. Br. 13, 31-32. Similarly, the Third Circuit stated: "When an agency receives a FOIA request, it is obligated to conduct a search

[26] If records are not confidential or exempt, the agency is free to release them even if the request is not technically proper. Such disclosure beyond the strict requirements of FOIA is encouraged. *See* Presidential Memorandum on FOIA, 74 Fed. Reg. 4683 (Jan. 29, 2009) (directing agencies to make information public without waiting for specific requests). In that event, there is no "search" or "response" as those terms are used in the statute.

that is reasonably calculated to uncover all relevant documents." *Mistick*, 186 F.3d at 384. This is not always true. An agency is required only to make records available. It may use any of the three formal modes of publication, or informal methods. Therefore, it is incorrect to say that all documents produced under FOIA are the result of an "investigation or report" in any sense of those words. Even if the Court were to adopt Schindler's broad definitions, there would still be no basis to hold that *every* document produced under FOIA is subject to the public disclosure bar.

That FOIA works in unpredictable ways is best illustrated by the facts in *Haight*. The relator conducted her own investigation into the defendants' alleged research fraud against NIH. She tried to use FOIA to obtain a copy of the NIH grant application, but NIH answered her FOIA request by informing the relator that she could go to a private hospital and obtain a copy of the grant application there. As the Ninth Circuit said:

> The specific facts of this case illustrate how ill-fitting the labels of "report" or "investigation" can be for responses to FOIA requests. Haight ultimately obtained the documents that she had requested by FOIA . . . by walking to Barrow and obtaining them herself. In this instance, the FOIA response consisted only of alerting Haight to the location of the documents relating to Dr. Berens' research. Far from putting any work product into those documents, in this instance the FOIA response did not even involve duplication.

Haight, 445 F.3d at 1155.

In short, not every FOIA request triggers a search and response. The sheer variety of mechanisms to publish records under FOIA undermines Schindler's categorical treatment of such records under the public disclosure bar.

B. The Term "FOIA Response" Is Not Listed in the Public Disclosure Bar

In some cases, of course, an agency receives a FOIA request and conducts a search for responsive documents. When the search is complete, the agency prepares a "response" that explains the results of the search and conveys any responsive documents. *See, e.g.*, 29 C.F.R. § 70.21 (prescribing form and content of DOL response to FOIA request). In many cases, it is the agency's response—or lack of response—that determines whether the district courts may hear a FOIA case. *See* 5 U.S.C. § 552(a)(6)(E)(iii) (agency's failure to provide timely response to FOIA request is subject to judicial review); *id.* § 552(a)(6)(E)(iv) ("A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request"). Accordingly, FOIA litigation often depends on whether an agency's activities constitute a "response."

Because of its special role in the administrative process and judicial review, "FOIA response" is a term of art. It constitutes a step in the administrative process that follows a request for records. That is how the term is used in the statute and the regulations of many federal agencies. By the time Congress amended the False Claims Act in

1986, the phrase "FOIA response" had a specific meaning that was familiar to people in the field, including judges. *See, e.g., Shurberg Broad. of Hartford, Inc. v. F.C.C.*, 617 F. Supp. 825, 831 (D.D.C. 1985) (discussing necessity for "quick response to plaintiff's FOIA request" and "administrative review of the initial FOIA response").

The special meaning of a key term in FOIA must be considered in construing the False Claims Act. The principles of statutory construction can be applied "to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times." *Bilski v. Kappos*, 130 S. Ct. 3218, 3229 (2010) (opinion of Kennedy, J.); *Overstreet v. N. Shore Corp.*, 318 U.S. 125, 131-32 (1943). Similar language in different statutes should be construed in the same manner, particularly where Congress was aware of cases construing the language of the earlier act. *Perrin v. U.S.*, 444 U.S. 37, 43 (1979) (earlier statutes extended the meaning of "bribery" beyond common-law definition); *Reiche*, 80 U.S. at 164. This rule of construction is particularly important where a term like "FOIA response" was created by an earlier statute and had been authoritatively construed by the courts when Congress amended the False Claims Act.

Congress knew the unique terminology of FOIA in 1986 when it adopted the public disclosure bar. It knew that FOIA offered one of the most common ways for citizens to obtain information from the government--information that might be used in *qui tam* suits. So Congress could have included a specific reference to FOIA in the list of enumerated sources in the public disclosure bar, by

adding "FOIA response" to the phrase "administrative . . . report, hearing, audit, or investigation." But Congress did not include that term.

Two courts have held that this fact resolves the question presented here. "[B]ecause the 1986 Amendments to section 3730(e)(4)(A) did not textually include FOIA information among the list of disclosures considered public, FOIA information is not encompassed by the public disclosure bar." *United States ex rel. Yannacopolous v. Gen. Dynamics*, 315 F. Supp.2d 939, 951-52 (N.D. Ill. 2004). "FOIA information, however, is not among the items listed in § 3730(e)(4)(A) as 'public disclosures' and therefore does not operate as a jurisdictional bar." *United States ex rel. Bondy v. Consumer Health Found.*, 28 F. App'x. 178, 184, n.2 (4th Cir. 2001) (unpublished decision). Under the doctrine *expressio unius est exclusio alterius*, a statute that contains an exclusive list of related items is properly construed to exclude items that are not listed. *TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001); *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 188 (1978). Here, the list of enumerated sources is exclusive. "FOIA response" is not listed, so the public disclosure bar does not apply.

C. A FOIA Response Is Not a "Report" and a FOIA Search is Not an "Investigation"

The text of FOIA also demonstrates that "response" does not mean "report." The dictionary defines "response" as "an act or action of responding (as by an answer)." Webster's at 1935. None of the subsidiary definitions refers to a report or to the act of providing information or notice. Thus,

even under Schindler's generic definition of "report," a FOIA response is not a report.[27] Notably, Congress used the two words in FOIA to refer to different kinds of documents created for different purposes. "Response" refers to the last step in the process of handling a request for documents under section 552(a)(3), while the word "report" refers to the annual reports concerning implementation of FOIA. *See* 5 U.S.C. § 552(e)(i) ("each agency shall submit to the Attorney General of the United States a report"); *id.* § 552(a)(4)(F)(ii) (requiring "report" to Congress on the number of FOIA actions in the preceding year).

Eliminating the distinction between "report" and "response" would create the anomalous situation where a response is not a report under FOIA, but is a report under the False Claims Act. "Of course, a word need not mean the same thing in different statutes, but the meaning attributed in one Act is far from irrelevant to the interpretation of another." *United States v. Embassy Rest., Inc.*, 359 U.S. 29, 38 (1959). Certainly, such a confusing result should be avoided.

The word "search" has a specific definition in FOIA. When an agency receives a request for records and the other conditions of section 552(a)(3)(A) are satisfied, the agency "shall make reasonable efforts to search for the records in electronic form or format." 5 U.S.C. § 552(a)(3)(C).

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[27] FOIA also requires "notification" to the requesting party, but that notice merely indicates whether the agency will comply with the request. 5 U.S.C. § 552(a)(6)(A). The "response" that actually transmits the documents is normally a separate step after the search is complete.

"For purposes of this paragraph, the term 'search' means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request." *Id.* § 552(a)(3)(D).

FOIA defines "search" as a "review." Webster's definitions of "investigate" and "investigation" do not include "review." *See* Webster's at 1189. On the other hand, of the dictionary's twelve definitions of "search," the one that describes a review is this:

> (1) To look into or over carefully or thoroughly in an effort to find something, as
>
> . . . (d) to peruse thoroughly and usually with a specific objective: subject to a careful check (search the records of the case) . . . esp. to examine a public record or register for information about (searching titles in the courthouse).

Id. at 2048. By contrast, the definition of "search" that refers to an investigation has an entirely different context:

> (1) To look into or over carefully or thoroughly in an effort to find something, as
>
> . . . (c) to look through or explore thoroughly, esp. by checking on possible places of concealment or investigating circumstances possibly leading to something being overlooked (searching the apartment building for the suspect).

Id. The type of "search" that involves a *review* is applicable to a perusal of public records, while the type of search that involves an *investigation* is

applicable to police checking a building for a suspect. Obviously, the first definition better fits the context of FOIA. By defining the statutory search as a review, FOIA leaves no doubt that the search for records is not an investigation.

This conclusion is supported by a series of decisions holding that agencies are *not* expected to conduct an investigation in response to a FOIA request.

> [I]t is the requester's responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome, and to enable the searching agency to determine precisely what records are being requested. The rationale for this rule is that *FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters*. Therefore, agencies are not required to maintain their records or perform searches which are not compatible with their own document retrieval systems.

Assassination Archives & Research Ctr., Inc. v. C.I.A., 720 F. Supp. 217, 219 (D.D.C. 1989), *aff'd*, 1990 WL 123924 (D.C. Cir. 1990) (emphasis added). "FOIA entitles citizens to the disclosure of documents, but does not oblige the government to answer their questions or establish a research service." *Bailey v. Callahan*, 2010 WL 924251 (E.D. Va. Mar. 11, 2010). "Indeed, an agency is not 'obliged to look beyond the four corners of the request for leads to the location of responsive documents.'" *Amnesty Int'l USA v. C.I.A.*, 2008 WL 2519908 (S.D.N.Y. June 19, 2008) (quoting *Kowalczyk v. U.S. Dep't of Justice*, 73 F.3d 386, 389 (D.C. Cir. 1996) (dismissing action to enforce

FOIA request that required agency to conduct investigation)).[28]

In short, a search for responsive documents under FOIA is a "review" of agency records, not an "investigation." This reading of the Act is consistent with the dictionary definitions of the words at issue and with numerous decisions holding that FOIA does not require an agency to conduct an investigation. Schindler's contrary view is based on a misreading of FOIA.

D. Schindler's Categorical Rule Leads to Irrational Results.

Under sections (a)(1) and (a)(2) of FOIA, the government discloses many documents without a search or response. Schindler does not contend that these documents are categorically covered by the sources listed in the public disclosure bar. Instead, when a *qui tam* complaint uses information obtained from, for example, an agency memorandum posted online pursuant to (a)(2), the court will evaluate that document to determine if it contains allegations disclosed in an administrative investigation or another source listed in the statute.

However, Schindler proposes special treatment for documents disclosed under section (a)(3)—those documents that have not been made avail-

[28] Schindler cites unpublished cases referring to a "FOIA investigation." Pet. Br. 21. The term appears to be an imprecise reference to a typical search for documents. It is possible that the agency conducted some sort of investigation in those cases, but that does not mean that *every* FOIA search is an investigation within the meaning of the False Claims Act, as Schindler contends.

able before the government receives a request for disclosure. Schindler wants *all* of these documents to be covered by the public disclosure bar, because (in some cases) the government conducts a search and prepares a response when it complies with the request. Under this scheme, a private contractor's report, like Schindler's VETS-100s, will be transformed into an administrative report because an agency happened to make it available under (a)(3).

Schindler's categorical approach leads to a number of irrational results. First, it means that a random decision by agency employees to disclose records under (a)(1) and (a)(2) before they receive a request for specific documents under (a)(3) will determine whether the court can hear a *qui tam* case. If someone had submitted a FOIA request in 2004 for another company's VETS-100 reports, the Department of Labor could well have determined to make Schindler's reports available under (a)(2), anticipating that someone would ask for them. If Mr. Kirk had then found the VETS-100 reports on a Department of Labor website, he would not have made a request and the agency would not have conducted a search or prepared a response. In that case, the VETS-100 reports would be 'publicly disclosed,' but, according to Schindler's reasoning, they would not be administrative reports or investigations. "It would show little respect for the legislature were courts to suppose that the lawmakers meant to enact an irrational scheme." *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 134-35 (1995).

Second, Schindler's categorical ban on FOIA documents would apply even when the agency did not conduct a search or prepare a response to a

request under (a)(3). For example, if a request is not technically compliant with the statute, the agency is free to provide readily accessible documents without conducting a full search. If an agency does not have the documents, but its FOIA officer knows where they are, the agency can issue a "response" that simply tells the requester where to find them. *See Haight*, 445 F.3d at 1155. This informal handling of FOIA requests is not uncommon; agencies are encouraged to disclose records even when they are not required to undertake a search. It makes no sense to hold that a document disclosed under FOIA is an "administrative report or investigation" when the agency did not conduct a search or provide a formal response.

Third, Schindler's approach would mean that two relators could obtain copies of the same publicly disclosed document, and only the relator who got the document through FOIA would find his case barred. If Schindler chose to publish its own VETS-100 reports (or sent them to veterans groups in an effort to generate goodwill) and an employee determined that they were fraudulent, the employee could use them to bring a *qui tam* suit. But Schindler contends that Mr. Kirk cannot use the same documents because he obtained them through FOIA. This result would discourage the use of FOIA by legitimate whistleblowers and undermine the purpose of the statute.

These anomalies are caused by Schindler's confusion between the first and second steps of the public disclosure analysis.[29] Publication through

[29] "The [public disclosure bar] requires that courts make a categorical determination: does the document at issue fit into one of the enumerated categories? This cate-

any one of the methods described in sections (a)(1), (2) or (3) of FOIA satisfies the first step of the analysis by making a document publicly available. But publication does not change the nature of the document or the information that it contains. A document may contain allegations of fraud disclosed "in a congressional, administrative, or [GAO] report, hearing, audit, or investigation" whether or not it was published under FOIA. When the two steps of the analysis are addressed separately—as the Second Circuit held—a document triggers the public disclosure bar if it contains allegations from one of the enumerated sources, regardless of *how* it was publicly disclosed.[30] False Claims Act jurisdiction does not depend on random choices among the three tiers of FOIA publication, and FOIA is not specially disfavored as a method to obtain information about fraudulent conduct.

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gorical determination must be made at the document level. Making a categorical determination at a more abstract level such as the disclosure method is tempting, but it folds the enumerated sources prong into the disclosure prong. The two prongs require independent determinations." *See* Fraser, *Reducing Fraud*, 75 U. Chic. L. Rev. at 514.

[30] The Tenth Circuit properly applied this analysis when it held that an agency letter released under FOIA was an administrative report that disclosed fraudulent transactions. The court focused on the content of the letter, not the agency's handling of the FOIA request, to decide whether the letter was an enumerated source of allegations of fraud. *U.S. ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038, 1049 (10th Cir. 2004).

III. The Letters and VETS-100 Reports Produced to Mrs. Kirk Are Not Administrative Reports or Investigations.

After the Second Circuit adopted context-appropriate definitions of "report" and "investigation," it turned to the next step in the well-established analysis. Looking at the letters and VETS-100 reports produced to Mrs. Kirk by DOL, the court concluded that the information in these documents was not disclosed in any of the sources listed in the public disclosure bar. This finding should be affirmed.

A. The VETS-100 Reports Are Not "Administrative"

Although the term "administrative" has a variety of meanings, "[w]hen used to modify the nouns 'report, hearing, audit, or investigation,' in the context of a statutory provision about "the public disclosure" of fraud on the United States, the term is most naturally read to describe the activities of governmental agencies." *Graham County II*, 130 S. Ct. at 1402. Thus, an administrative report must be created by a government agency, not by a private contractor like Schindler. The VETS-100 reports are clearly not administrative reports.

Schindler suggests that everything sent by DOL with its FOIA response to Mrs. Kirk is administrative—even if the enclosed document is a private contractor's report. *See* Pet. Br. 33; *Mistick*, 186 F.3d at 384 (HUD's response to FOIA request was an "administrative report" and "the documents that HUD provided were publicly disclosed 'in' that 'report'"). However, the public disclosure bar

does not refer to allegations "enclosed with" or "attached to" one of the enumerated sources. It refers to allegations disclosed "in" one of the enumerated sources. Here, the only documents obtained by Mrs. Kirk that can fairly be said to be "administrative" are the DOL cover letters to Mrs. Kirk, but the information provided by Schindler in the VETS-100 reports is not contained "in" those letters. DOL enclosed the VETS-100 reports with the first two FOIA responses (SA 100, 106) and attached the reports to an email containing the third FOIA response (SA 138). The letters do not refer to the contents of the VETS-100 reports at all.

If the Court adopted Schindler's theory, documents provided under FOIA without a cover letter or similar document created by the agency would be treated differently than the VETS-100 reports here. As explained in Point II above, FOIA does not always require a written "response." An agency may make its records available in a variety of ways, such as posting them online, mailing them without a cover letter or allowing the requester to inspect them. 29 C.F.R. § 70.21(a)(2).[31] If they were produced with no cover letter, the VETS-100 reports (and the information contained in them) would not be disclosed in an administrative report. The better approach is the one adopted by the Second Circuit: each document should be examined separately to determine if its contents trigger the public disclosure bar.

[31] In addition, agencies often provide documents separately from their determination letter, waiting for the requester to pay a processing fee before the documents are released. *See, e.g.*, 6 C.F.R. § 5.6.

Schindler also argues that the Department of Labor's search for the VETS-100 reports involved several complex steps that qualify as an investigation. Pet. Br. 33. These procedures, however, do not change the character of the document disclosed. A contractor's report does not become "administrative" because it is part of a FOIA response or located in a FOIA search.[32] The agency merely "reviews" a record under FOIA; it does not adopt or endorse its contents. Documents disclosed under FOIA do not "bear[] the government's imprimatur." Pet. Br. 14.

The survival of a *qui tam* complaint should not depend on whether an agency conducts a complex evaluation of its records under FOIA or simply copies and mails the requested documents. When the government releases a record under FOIA, that record is publicly disclosed under the False Claims Act. It makes no difference how the agency handled the FOIA request, because the "nature of the document" is unchanged. Here, the VETS-100 reports are private, non-governmental documents, so the Second Circuit properly concluded that they are not administrative. Pet. App. 33a. The information in the VETS-100 reports comes from Schindler, not from an administrative report or investigation.

[32] Under Schindler's theory, contractors could reduce the likelihood of a *qui tam* suit by requesting their own documents under FOIA, transforming them into administrative reports. *See* Fraser, *Reducing Fraud*, 75 U. Chic. L. Rev. at 520.

B. The Department of Labor Did Not Conduct an Investigation or Prepare a Report under FOIA or the False Claims Act.

The information contained in DOL's letters to Mrs. Kirk was not disclosed in an "administrative investigation." As explained in Point I above, a FOIA search is not an investigation under the False Claims Act. The dictionary definition of "investigation" that best fits the context of the public disclosure bar is an "official probe" with a target, or what the Second Circuit called a "government inquiry into a given subject," especially allegations of fraud and compliance with the law. Pet. App. 23a. Moreover, as explained in Point II, the word "search" is defined in FOIA as a "review," which is not a synonym for "investigation." Agencies are *not* expected to conduct investigations in response to FOIA requests.

The Department of Labor's letters show that the agency conducted a review of its records in 2005, first to locate them and then to identify material subject to the Privacy Act. *See* SA-100, 106. The letters do not indicate that DOL conducted a probe into any fraud or other type of misconduct by Schindler. Indeed, when the agency could not find many of Schindler's VETS-100 reports, it did not even try to determine whether those reports had been submitted by Schindler and then misplaced by the agency, or never submitted at all. The agency did not ask *why* the reports were missing. It was conducting a review of records, not an investigation.

Similarly, the DOL letters are merely responses to Mrs. Kirk's requests for records. They are not

reports. Congress used the word "report" in FOIA to refer to an entirely different type of document. *See* Point II(C), *supra*. Under the False Claims Act, "report" means the "formal account of the results of an investigation" into fraud or other misconduct. Specifically, an "administrative report" refers to the information compiled in an investigation (or audit or hearing) into the kind of fraudulent conduct described in the False Claims Act.

Although it is possible that a FOIA response could refer to a fraud investigation and even disclose investigative findings, the DOL letters here do not provide that kind of information. DOL simply told Mrs. Kirk that it had reviewed its files and released certain documents, and that other documents could not be found. Thus, the DOL letters are not administrative reports under the False Claims Act, and they do not contain information disclosed in an administrative investigation. The Second Circuit correctly held that the public disclosure bar does not apply to the documents provided to Mrs. Kirk in response to her FOIA requests.

CONCLUSION

The Court should affirm the Second Circuit's judgment and remand for further proceedings.

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REPLY BRIEF

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SCHINDLER ELEVATOR CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA
EX REL. DANIEL KIRK,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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CORPORATE DISCLOSURE STATEMENT

The Corporate Disclosure Statement is set forth at p. ii of the Petitioner's Opening Brief and there are no amendments to that statement.

TABLE OF CONTENTS

Page

CORPORATE DISCLOSURE STATEMENT ... i

TABLE OF CONTENTS ii

TABLE OF CITED AUTHORITIES iv

ARGUMENT 2

I. THE NARROW DEFINITIONS OF "REPORT" AND "INVESTIGATION" PROPOSED BY KIRK AND THE GOVERNMENT CONFLICT WITH THE ORDINARY MEANINGS OF THOSE TERMS AND ARE NOT SUPPORTED BY THE STATUTORY CONTEXT 2

A. The FCA's Plain Terms Reach FOIA Responses 2

B. Kirk's Proposed Definitions Conflict With the Public-Disclosure Bar's Purpose 8

C. The FOIA Statute Further Confirms That FOIA Responses Are "Reports" and "Investigations" 13

II. THE DRAFTING HISTORY OF THE FALSE CLAIMS ACT CONFIRMS THAT FOIA RESPONSES TRIGGER THE PUBLIC-DISCLOSURE BAR 16

Table of Contents

Page

III. THE RESULT URGED BY KIRK AND THE GOVERNMENT IS CONTRARY TO THE PUBLIC INTEREST 19

CONCLUSION 23

TABLE OF CITED AUTHORITIES

Page

CASES

Ali v. Fed. Bureau of Prisons,
552 U.S. 214 (2008) 6

Babbitt v. Sweet Home Chapter of Communities for a Great Oregon,
515 U.S. 687 (1995) 6

Glaser v. Wound Care Consultants, Inc.,
570 F.3d 907 (7th Cir. 2009) 9

Graham County Soil and Water Conservation Dist. v. United States ex rel. Wilson,
130 S. Ct. 1396 (2010) ..... *passim*

Hughes Aircraft Co. v. United States ex rel. Schumer,
520 U.S. 939 (1997) 19

Kucana v. Holder,
130 S. Ct. 827 (2010) 7

Muscarello v. United States,
524 U.S. 125 (1998) 3

N.L.R.B. v. Highland Park Mfg. Co.,
341 U.S. 322 (1951) 3

United States ex rel. Aflatooni v. Kitsap Physicians Servs.,
163 F.3d 516 (9th Cir. 1999) 8

Cited Authorities

Page

United States ex rel. Doe v. John Doe Corp.,
960 F.2d 318 (2d Cir. 1992) 17

United States ex rel. Findley v.
FPC-Boron Employees' Club,
105 F.3d 675 (D.C. Cir. 1997) 9, 18

United States ex rel. Jamison v.
McKesson Corp.,
No. 2:08CV214-SA-DAS, 2010 WL 1276712
(N.D. Miss. Mar. 25, 2010) 15

United States ex rel. Jones v.
Collegiate Funding Servs., Inc.,
No. 3:07CV290-HEH, 2011 WL 129842
(E.D. Va. Jan. 12, 2011) 15

United States ex rel. Lewis v. Walker,
No. 3:06-CV-16(CDL), 2010 WL 3614144
(M.D. Ga. Sept. 8, 2010) 2

United States ex rel. Marcus v. Hess,
317 U.S. 537 (1943) 5

United States ex rel. Mistick PBT v.
Hous. Auth. of the City of Pittsburgh,
186 F.3d 376 (3d Cir. 1999) 3

United States ex rel. Ondis v.
City of Woonsocket,
587 F.3d 49 (1st Cir. 2009) 4

Cited Authorities

Page

United States ex rel. Ridenour v. Kaiser-Hill Co.,
397 F.3d 925 (10th Cir. 2005) 20

United States ex rel. Rosner v.
WB/Stellar IP Owner, L.L.C.,
Nos. 06 Civ. 7115 (SAS), 06 Civ. 11440 (SAS),
2010 WL 2670829 (S.D.N.Y. July 2, 2010). 15

United States ex rel. Springfield Terminal
Ry. Co. v. Quinn,
14 F.3d 645 (D.C. Cir. 1994) 9, 17

United States ex rel. Stewart v. La. Clinic,
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Page

STATUTES

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Relator Daniel Kirk and the government contend that a qui tam relator who has no independent information about publicly disclosed fraud may nonetheless claim the FCA's enormous bounties merely for asserting legal arguments or analysis that the government did not pursue. They advance this result even though they do not dispute that the ordinary meanings of "report" and "investigation" encompass inquiries and responses made under FOIA. Adoption of the unnatural statutory interpretation they endorse would result in a flood of FOIA requests and, ultimately, parasitic lawsuits—exactly the consequence that Congress intended to avoid.

Tellingly, Kirk and the government never even apply their preferred interpretation to the FOIA responses actually at issue. They virtually ignore Kirk's allegations that, for most of the years addressed in his complaint, Schindler did not file any VETS-100 reports at all. His sole basis for making this failure-to-file claim is the Labor Department's official notification that it did not possess Schindler's reports. Plainly, the agency "investigated" whether Schindler had filed VETS-100 reports and "reported" its conclusions; Kirk and the government point to no one else who could have investigated this fact. The result is no different in the instances where the government found responsive VETS-100 reports (ones Kirk alleges to be "false"). The presence of a "report" or "investigation" does not depend on what an agency ultimately finds or concludes. These terms encompass any formal, officially sanctioned means of acquiring or disseminating information.

Ultimately, Kirk and the government seek to resurrect the same mistaken "on the trail" theory of the public-

disclosure bar that this Court rejected only last Term in *Graham County Soil and Water Conservation District v. United States ex rel. Wilson*, 130 S. Ct. 1396 (2010). This theory flies in the face of undisputed legislative history showing that Congress considered, but rejected, a version of the bar that would have allowed qui tam suits based on publicly disclosed information if the government failed to act on it. It also contorts the statute's language and contravenes its well-established purpose of rewarding only relators who come forward with valuable information.

ARGUMENT

I. THE NARROW DEFINITIONS OF "REPORT" AND "INVESTIGATION" PROPOSED BY KIRK AND THE GOVERNMENT CONFLICT WITH THE ORDINARY MEANINGS OF THOSE TERMS AND ARE NOT SUPPORTED BY THE STATUTORY CONTEXT

A. The FCA's Plain Terms Reach FOIA Responses

There is no dispute that, in interpreting the public-disclosure bar, the Court should begin with the assumption that the language employed by Congress is to be afforded its ordinary, contemporary meaning. See Pet. Br. 18-19; Resp. Br. 21. Nor is there any dispute that, when given their common, ordinary meanings, Pet. Br. 18-22, the statutory terms comfortably include a governmental agency's response to a FOIA request and its search for documents responsive to such a request.[1]

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1. See *United States ex rel. Lewis v. Walker*, No. 3:06-CV-16(CDL), 2010 WL 3614144, at *6 (M.D. Ga. Sept. 8, 2010) ("The FCA itself does not narrow the definition of the word 'report'—which is 'typically defined as something that gives information.'").

However, Kirk and his *amici* urge the Court to adopt far narrower definitions, which they contend are more compatible with the statutory "context." Resp. Br. 16; Gov't Br. 18. In doing so, they ignore the directive that a statutory term should be interpreted by looking to its "first, or primary, meaning," and not a "different, somewhat special meaning of the word."[2] *Muscarello v. United States*, 524 U.S. 125, 128-30 (1998) (interpreting the term "carries" by looking to the "*first*" dictionary definition, and not the "*twenty-sixth*") (emphases in original); see also *United States ex rel. Mistick PBT v. Hous. Auth. of the City of Pittsburgh*, 186 F.3d 376, 384 n.4 (3d Cir. 1999) ("The dissent seems to have in mind a particular type of government report . . . but the ordinary understanding of the term 'report' is broader.").[3]

In any event, Kirk and the government cannot show that FOIA responses are excluded by even the specialized meanings that they prefer. From twelve definitions of "report," they emphasize the tenth: a "usually formal account of the results of an investigation given by [an authorized] person or group." Resp. Br. 27; Gov't Br. 16 (citing *Webster's* at 1925). They embrace the very last of six definitions of "investigation": "an official probe." Pet. Br. 29, Gov't Br. 17 (citing *Webster's* at 1189). Yet even

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2. Schindler, in contrast, points the Court to common, accepted meanings of the disputed terms. Compare Pet. Br. 19-20, with *Webster's Third New International Dictionary* 1189, 1925 (1971) [hereinafter, "*Webster's*"].

3. See also *N.L.R.B. v. Highland Park Mfg. Co.*, 341 U.S. 322, 324-25 (1951) ("If Congress intended [statutory terms] to have . . . other than their ordinarily accepted meaning, it would and should have given them a special meaning by definition.").

these carefully selected meanings would encompass the official searches and notifications given by the Labor Department's Office of Investigation and Compliance in response to Mrs. Kirk's FOIA requests. However deeply they plumb the dictionary, Kirk and the government cannot overcome the fact that "a FOIA response . . . constitutes an official statement concerning the results of the agency's search of its files."[4] *United States ex rel. Ondis v. City of Woonsocket*, 587 F.3d 49, 56 (1st Cir. 2009).

It is only by insinuating into their preferred definitions an additional and wholly unwarranted requirement that an "investigation" or "report" focus on *wrongdoing* that Kirk and his *amici* cobble together an interpretation that supports their desired outcome. See, e.g., Resp. Br. 58 ("Under the [FCA], 'report' means the 'formal account of the results of an investigation' into fraud or other misconduct."); *id.* at 18 (no "investigation" because "the agency did not conduct an 'official probe' into any fraud, crime or other misconduct."); Gov't Br. 21 (no "report" or "investigation" "because the federal agency is not charged with uncovering the truth of any matter, let alone inquiring into wrongdoing"). The "wrongdoing" requirement they would import into the FCA would result in an unusual and exceedingly narrow understanding of the disputed terms, excluding not only FOIA responses

4. Responding to a FOIA request is the functional equivalent of public testimony by the government about the results of its search. Cf. *United States v. Hubbell*, 530 U.S. 27, 41-42 (2000) (responding to a subpoena *duces tecum*, when it requires the respondent's "assistance both to identify potential sources of information and to produce those sources," is "the functional equivalent" of answering "detailed" interrogatories or questions at a deposition, and is "testimonial" for purposes of the Fifth Amendment).

but many other items commonly understood to be reports or investigations.[5]

The source of the putative "wrongdoing" requirement is not the FCA's language or any dictionary definition, but the same "on the trail" theory of the public-disclosure bar that this Court previously rejected in *Graham County*, 130 S. Ct. at 1410 (public information need not reach the "desk of a DOJ lawyer"); *id.* at 1405 ("It is the fact of 'public disclosure'—not Federal Government creation or receipt—that is the touchstone of § 3730(e)(4)(A)"); Pet. Br. 39-45. Understandably, Kirk and the government now avoid the "on the trail" terminology, but they persist in arguing that the bar applies only if the government previously viewed the disclosed facts as potentially actionable misconduct. The broad terms "report" and "investigation" simply do not impose that requirement.[6]

Nothing about the statutory context suggests otherwise. The ordinary meaning of "report" does not, as Kirk argues, "swallow up" "audit" or "hearing" because—as Kirk's own brief states—the latter terms denote

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5. For example, under Kirk's cramped definition, the VETS-100 reports at issue are not, in fact, "reports," because they do not inquire into misconduct. Nor, for the same reason, are agencies' "annual reports concerning implementation of FOIA" actually "reports," so defined. Resp. Br. 47.

6. That "FOIA responses" are not specifically mentioned in the public-disclosure bar is of no consequence. The paradigmatic source of parasitic lawsuits that Congress intended to preclude—a criminal indictment, *see United States ex rel. Marcus v. Hess*, 317 U.S. 537 (1943)—is likewise not specifically mentioned. Nor are other specific means of disclosure—e.g., the "census," a "newspaper column"—that are also undoubtedly covered by the broader enumerated sources. So too are FOIA responses.

processes "to *obtain* information," whereas a "report" is a statement of facts that were previously determined. Resp. Br. 23 (emphasis added). If that distinction were ignored, Kirk's proposed interpretation would present a far greater redundancy problem than Schindler's. He defines a "report" as something that follows exclusively from (his definition of) an "investigation," Resp. Br. 16, leaving it unclear why Congress included "report" in the statute at all. To the extent that the broad term "investigation," given its ordinary meaning, might overlap with "hearing" or "audit," this is true of Kirk's interpretation of the term as well; Congressional hearings are certainly one means of conducting an "official probe."[7]

Also unpersuasive is the government's argument that "administrative" "report[s]" and "investigation[s]" must be "analogous to those that Congress and the GAO would issue or conduct." Gov't Br. 18. This variation of the *noscitur a sociis* argument fails for much the same reasons as the Second Circuit's analysis does. Pet. Br. 25-30. The terms "congressional," "[GAO]" and "administrative" merely denote three separate categories of governmental actors. Beyond that, no "analogy" between the enumerated sources need or should be drawn.[8] See *Graham County*, 130 S. Ct. at 1403.

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7. Cf. *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687, 698 n.11 (1995) ("overlap" in definitions of terms in the Endangered Species Act "reflects the broad purpose of the Act").

8. Kirk's reliance on the *ejusdem generis* doctrine is similarly misplaced. Resp. Br. 24 n.11. He points to no common attribute among the other statutory sources—"audit," "hearing," and "news media"—that favors his interpretation. Cf. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 223-26 (2008).

Kirk purports to find support for his interpretation from other uses of "investigation" in the FCA, which are accompanied by the modifier "criminal or civil." Resp. Br. 31-33. What this actually shows, however, is that Congress knows how to limit the broad term "investigation" when it wants to do so. Indeed, it *did* limit "investigation" elsewhere in the FCA, but pointedly omitted any such limitation in the provision at issue here—despite including the terms "criminal" and "civil" elsewhere in the public-disclosure bar itself.[9] "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Kucana v. Holder*, 130 S. Ct. 827, 838 (2010) (internal quotation marks and alteration omitted).

The government queries why, if Schindler's interpretation is correct, Congress did not make the bar applicable to any public disclosure "by a congressional, administrative, or GAO employee." Gov't Br. 19. That test would indeed differ from the one imposed by the existing statute, but not for the reasons suggested by the government. The actual statutory language—"report, hearing, audit, or investigation"—applies to formal, officially sanctioned processes by which Congress, the GAO, or administrative agencies acquire or disseminate information. The language suggested by the government, in contrast, would apply to disclosures that do not carry the government's official imprimatur and, even, apparently when the disclosure occurred because the government itself was complicit in the fraud (as with solicitations of bribery).

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9. See 31 U.S.C. § 3730(e)(4) ("criminal, civil, or administrative hearing").

The government similarly ignores the statute's focus on formal, official processes when it claims that, under Schindler's view, "a congressional staffer's response to a press inquiry would be a congressional 'report.'" Gov't Br. 19. Such a response could trigger the bar if it appeared in the "news media"—an enumerated source that Kirk and the government persistently ignore. But a staffer's remark would not be a "congressional report" because it is not an official dissemination of information by Congress, or even a member of Congress. FOIA responses, by contrast, are official agency determinations made pursuant to express statutory authorization, which are subject to appeal. See, e.g., SA 100. These formal notifications cannot meaningfully be compared to offhand remarks by a legislative employee.[10]

B. Kirk's Proposed Definitions Conflict With the Public-Disclosure Bar's Purpose

For decades, courts have recognized that Congress enacted the public disclosure bar in order to find "'the golden mean'" separating "whistle-blowing insiders with

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10. The government is no doubt correct that "at least *some* public disclosures by the government will not trigger" the bar. Gov't Br. 19. But there is no reason to think that information formally revealed in official inquiries or notifications is among the excluded disclosures. Cf. *United States ex rel. Aflatooni v. Kitsap Physicians Servs.*, 163 F.3d 516, 524 (9th Cir. 1999) ("closely-held inquiry" by Medicare administrator into fraud by its own board member "lacked the institutionalized nature" necessary for an administrative investigation); *United States ex rel. Stewart v. La. Clinic*, No. Civ.A. 99-1767, 2002 WL 1066745, at *6 (E.D. La. May 28, 2002) ("informal office visit" to instruct employees on Medicaid/Medicare compliance was not administrative investigation).

genuinely valuable information" from "'opportunistic plaintiffs who have no significant information to contribute.'" *Graham County*, 130 S. Ct. at 1406 (quoting *United States ex rel. Springfield Terminal Ry. Co. v. Quinn*, 14 F.3d 645, 649 (D.C. Cir. 1994)); see also *Glaser v. Wound Care Consultants, Inc.*, 570 F.3d 907, 915 (7th Cir. 2009) ("[T]he public-disclosure bar implements the congressional interest in paying relators only for useful information.") (alteration, internal quotation marks and citation omitted).

Kirk and the government now foist onto § 3730(e)(4) a new and different purpose: to compensate relators not for new *information* but for "recogniz[ing] the previously unappreciated significance of 'raw' information released by the government." Gov't Br. 19, 28. But a relator who contributes only legal theories or analysis, as opposed to facts, is not a "whistle-blowing insider" and thus not someone whom Congress chose to reward. See *United States ex rel. Findley v. FPC-Boron Employees' Club*, 105 F.3d 675, 688 (D.C. Cir. 1997) ("A relator's ability to recognize the legal consequences of a publicly disclosed fraudulent transaction does not alter the fact that the material elements of the violation already have been publicly disclosed."); *United States ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Prudential Ins. Co.*, 944 F.2d 1149, 1160 (3d Cir. 1991) ("The relator must possess substantive information about the particular fraud, rather than merely background information which enables a putative relator to understand the significance of a publicly disclosed transaction . . . .").

The notion that relators earn the FCA's extraordinary bounties merely by asserting legal arguments or

claims not pursued by the government is an axiom of the discredited "on the trail" theory, and an attempt to resurrect a proposal considered, but rejected, by Congress. Pet. Br. 39-45. It is also at odds with the FCA's undisputed purpose of precluding "parasitic" lawsuits. For if Kirk and the government are right, then any stranger to an alleged fraud can—and will—simply ask the government to determine whether any contractor has satisfied reporting requirements, and when the government reports noncompliance, claim the FCA's hefty monetary rewards.[11]

That is precisely what Kirk attempts to do, though his brief and the government's repeatedly elide this fact. They do so in part by steadfastly focusing only on Kirk's claims that Schindler filed false VETS-100 reports.[12] In fact, for six of the nine years at issue (1998–2003), Kirk claims that Schindler did not file any VETS-100 reports at all. See JA 14a-16a, 33a, 37a-42a. These failure-to-file claims are based entirely on the Labor Department's notifications that it did not possess Schindler's reports. See Pet. App. 81a ("Kirk offers no other basis for a fact-finder to conclude that Schindler failed to file VETS-100 reports."). Kirk's

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11. Some *700* qui tam "patent marking" cases have reportedly been filed since a 2009 Federal Circuit decision enhancing the available damages. Dionne Searcey, *Banks Become Targets for Patent Suits*, WALL ST. J., Jan. 24, 2011, at B10. An even greater surge in FCA qui tam litigation would likely result from an affirmance here.

12. See, e.g., Gov't Br. 22 ("[I]n processing the relevant FOIA requests, DOL simply located the VETS-100 Reports that petitioner had previously submitted, determined what redactions were appropriate, and released the redacted documents to the requester.").

own complaint confirms that this is so.[13] Thus, if the agency did not "investigate" whether Schindler filed VETS-100 reports in certain years, then *no one* did, as Kirk did not do so. And the agency undoubtedly "report[ed]" the results of these investigations; Kirk learned of them no other way.

Kirk and the government give little heed to the FOIA responses concerning the failure-to-file claims—the ones predominantly at issue—except to say they are no different from other FOIA responses. Resp. Br. 18; Gov't Br. 23 n.12. In this, at least, they are correct. For once the government undertakes an official inquiry of this nature, the inquiry is an "investigation" regardless of what it ultimately turns up. It is the process of inquiring into VETS-100 reports—not whether such reports are found—that constitutes the "investigation." And any formal statement of the results of that investigation—regardless of what is stated—is a "report."

Kirk and the government would presumably agree that the Labor Department conducts an "investigation" if it inquires into a contractor's VETS-100 reports for the purpose of enforcing VEVRAA. Yet if the *same* agency makes the *same* inquiry to respond to a FOIA request, they claim there was no "investigation" because the agency was not concerned with "some kind of malfeasance." Resp. Br. 30. This reading of the public-disclosure bar cannot be squared with its long-recognized purpose of precluding suits by would-be relators who provide no valuable information.

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13. See, e.g., JA 14a ("Most important, *according to information provided to Mr. Kirk by the Department of Labor*, Schindler failed to file the required VETS 100 reports for any of its business units until late 2004.") (emphasis added).

Kirk himself has no such information, despite his vigorous protests to the contrary. He does not even purport to have independent information about the failure-to-file claims.[14] See Resp. Br. 7-8, 10. As for the allegedly false reports, they first were filed, according to Kirk, in "late 2004," but his "career at Schindler ended abruptly in 2003." Resp. Br. 3, 10. Thus, his contention that Schindler "never offered him an opportunity to identify himself" as a veteran is irrelevant; he was not even at the company during the relevant time period. Resp. Br. 7. Moreover, the Labor Department's decision rejecting Kirk's administrative appeal directly quotes Schindler's 2004 affirmative action policy, which expressly states that veterans "are invited voluntarily to self-identify." JA 117a-18a. In any event, the false-report claims are themselves based on a false premise: that the VETS-100 reports state the *actual* number of Schindler's veteran employees. In truth, they reflect—and were required to reflect—only employees who voluntarily *self-identified* as veterans.[15] See Pet. Br. 7. Accordingly, Kirk's allegation

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14. The government suggests that Kirk had personal knowledge of Schindler's "federal contracts subject to VETS-100 reporting requirements." Gov't Br. 23 n.12. However, the basis on which Kirk alleged that Schindler had federal contracts was printed data from publicly accessible government websites that he attached to his complaint. SA 5-54.

15. Accordingly, Schindler argued below that a contractor cannot "certif[y] the accuracy" of VETS-100 reports. Pet. App. 43a. It did not argue, as the government claims, that "submission of a knowingly false VETS-100 Report is not actionable under the FCA." Gov't Br. 31 n.14. The portion of the Second Circuit's decision cited by the government concerns Schindler's argument that the FCA's materiality requirement—a completely separate element from knowledge or falsity—was not satisfied because the data contained in VETS-100 reports has no effect on the government's funding decisions. Pet. App. 43a-47a.

that he "personally knows . . . a number of covered veterans working for Schindler" who were not counted in the reports is irrelevant. Resp. Br. 10 (quoting Pet. App. 7a). Kirk does not allege that any of these "covered veterans" self-identified as such, so there is no reason to think that they should have been counted.

Whether Kirk possessed material, non-public information is relevant to whether Schindler could satisfy the "allegations or transactions" prong of the public-disclosure bar, a wholly distinct requirement.[16] But Kirk and the government want to terminate the public-disclosure bar analysis before it reaches that prong. Accordingly, it is not Schindler who asks the Court to adopt a "categorical" result, as Kirk and his *amici* repeatedly and incorrectly assert;[17] for even if FOIA responses are held to be "reports" and "investigations," a qui tam defendant must still meet the jurisdictional bar's other requirements. It is, rather, Kirk and his *amici* who seek a "categorical" ruling because they would preclude the bar from applying, whether the relator has contributed new information or not. That result is completely incompatible with the FCA's well-established purposes.

C. The FOIA Statute Further Confirms That FOIA Responses Are "Reports" and "Investigations"

Schindler's opening brief demonstrates that FOIA responses involve processes that are far more "focused and sustained" than the "mechanistic production of

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16. See Pet. App. 14a-15a ("'[A]llegations or transactions' have been disclosed when all of the material elements of the fraudulent transaction were already in the public domain.").

17. See, e.g., Resp. Br. 51; Gov't Br. 32; AARP Br. 21; Public Citizen Br. 13-14; TAFEF Br. 4.

documents" imagined by the Second Circuit. Pet. App. 24a. Accordingly, FOIA responses are "reports" and "investigations" even as narrowly defined by the court below. Pet. Br. 30-34.

Kirk and the government nonetheless argue that Schindler's statutory interpretation would yield "irrational results" because § 3730(e)(4)(A)'s applicability supposedly would depend on which of three methods of FOIA disclosure an agency used. Resp. Br. 50-53; Gov't Br. 23-26. This argument fails for multiple reasons.

As a practical matter, the issue of the public-disclosure bar's applicability to those other methods of FOIA disclosure will infrequently arise. The first method—publication in the Federal Register under 5 U.S.C. § 552(a)(1)—applies primarily to agency organization, procedures, and rules. 5 U.S.C. § 552(a)(1)(A)-(E). Rarely will these or any materials suitable for publication in the Federal Register disclose allegations of fraud. The second method—making records available in a public reading room or electronically under 5 U.S.C. § 552(a)(2)—applies to: agency adjudications (which would fall within the bar even under Kirk's theory); agency interpretations or manuals not published in the Federal Register (which are unlikely to contain allegations of fraud); and certain records that were "*previously released* in response to a FOIA request" (as to which the *original* release under 5 U.S.C. § 552(a)(3) would already have triggered the public-disclosure bar). Gov't Br. 23 (emphasis added); 5 U.S.C. § 552(a)(2)(A)-(E).

As for the rare circumstances that do implicate the public disclosure bar's applicability to materials in the Federal Register or in actual or virtual government

"reading rooms," Kirk and the government wrongly presume that the bar would not be triggered. Gov't Br. 23-24; Resp. Br. 51. They cite nothing to support this presumption and there is existing case law to the contrary. See, e.g., *United States ex rel. Jamison v. McKesson Corp.*, No. 2:08CV214-SA-DAS, 2010 WL 1276712, at *3, *6-*7 (N.D. Miss. Mar. 25, 2010) (holding that republication of Inspector General Fraud Alert report in Federal Register five years later "to identify 'national trends in health care fraud'" was itself an "administrative report"); *United States v. Sodexho, Inc.*, No. 03-6003, 2009 WL 579380, at *13 n.6 (E.D. Pa. Mar. 6, 2009) ("[T]he fact that the theory initially appears . . . as a direct quote from the Federal Register illustrates that Relator plucked it directly from the public domain and is thus barred by Section 3730(e)(4) from asserting it."); *United States ex rel. Rosner v. WB/Stellar IP Owner, L.L.C.*, --- F.Supp.2d ----, Nos. 06 Civ. 7115 (SAS), 06 Civ. 11440 (SAS), 2010 WL 2670829, at *7 (S.D.N.Y. July 2, 2010) (applying the Second Circuit's *Kirk* decision to conclude that data made available on a government website was an "administrative report," as it was readily searchable by the public and did "not present raw, unanalyzed data" but "synthesized" and "organized" tax benefit histories); *United States ex rel. Jones v. Collegiate Funding Servs., Inc.*, No. 3:07CV290-HEH, 2011 WL 129842, at *7 (E.D. Va. Jan. 12, 2011) (concluding that "SEC filings . . . which the government disclosed to the public on its website, constituted 'administrative reports'").[18]

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18. Nor is the public-disclosure bar's scope cabined by Congress's contemporaneous creation of a FOIA exemption for certain information disclosed by FCA offenders who cooperate with fraud investigations. See Gov't Br. 20 n.10. This amendment reflects Congress's desire to encourage those with firsthand knowledge of fraud to come forward, see, e.g., S. Rep. No. 99-345, at 4 (1986) — a goal the FOIA exemption advances.

Underlying Kirk's and the government's FOIA argument is their puzzling assertion that Congress did not "intend[] Section 3730(e)(4)(A)'s application to turn on the method of public disclosure." Gov't Br. 13; Resp. Br. 18 ("The *method* of publication is not relevant . . . ."). In fact, the enumerated sources in § 3730(e)(4) ensure that the method of disclosure *will* be relevant. But those enumerated sources are not, as Kirk and the government claim, intended to isolate information that the government has previously viewed as potentially concerning malfeasance. Rather, they are intended to encompass the formal, officially sanctioned processes by which the government acquires or disseminates information. For once such information enters the public domain, there is no longer any reason to incentivize relators to come forward with it.[19]

II. THE DRAFTING HISTORY OF THE FALSE CLAIMS ACT CONFIRMS THAT FOIA RESPONSES TRIGGER THE PUBLIC-DISCLOSURE BAR

According to Kirk, when Congress enacted the public-disclosure bar in 1986, it wanted to permit suits by "stranger[s] to the fraud" whose claims are admittedly based on public information, if disclosed outside of

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19. Accordingly, the government misses the mark when it claims that, "even under petitioner's approach, there is no bright line [rule]." Gov't Br. 25. Given their ordinary meanings, the statutory terms encompass formal governmental inquiries or notifications. This interpretation draws a far brighter line than that urged by the government, which turns, among other things, on how "focused" was the government's "inquiry or analysis." Gov't Br. 19.

"narrow[ly] defin[ed]" enumerated sources. Resp. Br. 34, 37, 38. Thus, Kirk and his *amici* maintain that Congress meant to *allow* broad categories of "lawsuits by those who learn of the fraud through public channels." *Graham County*, 130 S. Ct. at 1408 n.16 (internal quotation marks omitted). As previously shown, the FCA's drafting history belies this contention, Pet. Br. 34-45, as do numerous judicial decisions recognizing Congress' goal of "stifling parasitic lawsuits." *Graham County*, 130 S. Ct. at 1407.

Kirk and the government view strangers to a fraud as proper relators because, according to them, Congress made independent knowledge of fraud relevant only to the original-source exception to the public-disclosure bar, not to the bar itself. Gov't Br. 14, 29; Resp. Br. 37. But this Court and others have long recognized that Congress sought to reward relators only for "significant *independent* information." *Springfield Terminal*, 14 F.3d at 653 (emphasis added); see also *Graham County*, 130 S. Ct. at 1406. Conversely, Congress did not intend to reward relators for "information that would have been equally available to strangers to the fraud transaction had they chosen to look for it . . . ." *United States ex rel. Doe v. John Doe Corp.*, 960 F.2d 318, 322 (2d Cir. 1992) (internal quotation marks omitted). Yet it is precisely on the basis of such information that Kirk seeks an outsized recovery.

In denying that Congress was concerned with independent knowledge of fraud, Kirk and the government completely ignore that Congress explicitly considered authorizing recoveries by relators who had only "indirect" knowledge—recoveries that the Senate Report recognized would be "inappropriate windfalls"—and decided *not* to do so. Pet. Br. 42-45. Moreover, the reason that Congress

contemplated permitting those "inappropriate" suits—a reason it ultimately did not find persuasive—is the same reason that Kirk and the government argue that the bar should be narrowly construed: to encourage relators to bring suit when the government has not. See, e.g., Gov't Br. 28 ("[A] relator's primary contribution [may be] recognizing the previously unappreciated significance of information already in the government's possession."). The drafting history shows that Congress rejected this rationale for qui tam recoveries, and courts have properly rejected it as well. See *Stinson*, 944 F.2d at 1160; *Findley*, 105 F.3d at 688.

Accordingly, Congress did not, as Kirk argues, establish a general rule allowing qui tam suits based on public information and then carve out a "narrow *exception*" with the public-disclosure bar. Resp. Br. 37 (emphasis in original). Rather, Congress intended, as the 1986 amendment's principal sponsor explained, that "jurisdiction for qui tam actions based on information that has been publicly disclosed *will be limited* to those people who were 'original sources' of the information." 132 Cong. Rec. S11238-04, 1986 WL 783415, at 20 (emphasis added).

Kirk and the government find support for their interpretation from the fact that Congress did not "simply creat[e] an original-source exception while retaining the government-knowledge bar." Gov't Br. 29; see also Resp. Br. 37 & n.21. But there are good reasons to allow suits based on non-public information that is known to the government. For one thing, the government itself might be complicit in the fraud. For another, the government cannot be held accountable for its decision whether, or how, to act upon fraud of which it is aware unless such fraud is exposed to the public. When facts underlying such fraud

are hidden, the government's enforcement priorities and exercises of prosecutorial discretion are shielded from scrutiny. Once the information is publicly revealed, the government is accountable for its decisions, so there is good reason to encourage relators to disclose such fraud even though the government is aware of it. After public disclosure, the only "whistle-blowers" are the original sources, and there is no reason to reward anyone else for bringing suit.

III. THE RESULT URGED BY KIRK AND THE GOVERNMENT IS CONTRARY TO THE PUBLIC INTEREST

Schindler's opening brief demonstrated that embracing Kirk's position would harm the public interest by raising the government's costs of doing business without providing a commensurate public benefit. Pet. Br. 45-49. Notably, the government does not dispute the key elements of this demonstration. It does not deny that bounty-seeking relators will bring multitudes of qui tam actions "based on a mere technical noncompliance with reporting requirements that involved no harm to the public fisc"—noncompliance of which the relator has no personal knowledge. *Hughes Aircraft Co. v. United States ex rel. Schumer*, 520 U.S. 939, 946, 949 (1997). Nor does it deny that, when this occurs, the "relator's interests and the Government's do not . . . coincide." *Id.* at 949 n.5.

Instead, the government points to "screening mechanisms" within the FCA that will supposedly ameliorate the problem that a cramped interpretation of the public-disclosure bar creates. None of these "safety valves" has so far disposed of this case, which has been pending for nearly six years, and there is no reason to

think they will be more effective in the deluge of cases that will follow if this suit proceeds.

One screening mechanism relied on by the government is that it could "seek dismissal" of a qui tam suit that "disrupt[ed] the operations of an important contractor." Gov't Br. 32 n.15. Of course, simply because the government "seeks" dismissal of an action does not ensure that it would occur.[20] But even if such dismissal motions were invariably granted, this is cold comfort to the potentially vast numbers of contractors who the government may decide are not sufficiently "important" to merit this extraordinary and resource-intensive step. Moreover, the government ignores that dismissal would take place, if at all, long after the costs of excessive qui tam litigation had been incurred. Unless the government took the unlikely step of guaranteeing *ex ante* that it would eliminate a contractor's qui tam litigation risk, that risk would be present when the contract was made and would be passed along in the form of higher costs.[21]

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20. A court may deny a dismissal sought by the government if the relator can demonstrate after a hearing "that dismissal is fraudulent, arbitrary and capricious, or illegal." *United States ex rel. Ridenour v. Kaiser-Hill Co.*, 397 F.3d 925, 936 (10th Cir. 2005) (quotation marks and citation omitted). Similarly, the government cannot settle a qui tam action over the relator's objection unless a court first determines "after a hearing, that the proposed settlement is fair, adequate, and reasonable." 31 U.S.C. § 3730(c)(2)(B).

21. Similar difficulties beset Kirk's suggestion that the government could "transfer any *qui tam* action out of court" and pursue administrative penalties. Resp. Br. 5 & n.2 (citing 31 U.S.C. § 3730(c)(5)). Unless the government represents that it will transfer all future qui tam cases like this one to administrative

Another screening mechanism asserted by the government is that the FCA permits awards of attorneys' fees to prevailing defendants for "clearly frivolous" or "clearly vexatious" qui tam suits. Gov't Br. 31. But even in the cases where those exacting standards could be met, the relief is unlikely to come without substantial litigation and individual relators are unlikely to have the resources to pay the attendant attorneys' fees.

The government also suggests that some qui tam defendants may be able to "prevail on the merits," or show noncompliance with heightened pleading requirements.[22] Gov't Br. 31. But the entire point of a jurisdictional bar is that it is distinct from—and prior to—adjudication on the merits and other non-jurisdictional defenses. That some qui tam defendants may have meritorious defenses *other* than the jurisdictional bar (as Schindler believes it does) is no ground to deprive the bar of the preclusive effect that Congress intended.

The government's resort to "screening mechanisms" is particularly misplaced because, under the recent amendment to the public-disclosure bar, the government has the unfettered option to prevent the bar from applying in any particular case. See Patient Protection and Affordable Care Act, Pub L. No. 111-148, 124 Stat. 119, 901 (2010) ("The court shall dismiss an action or claim

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proceedings—which might strain administrative resources beyond the breaking point—potential contractors will likely decline to bid or monetize the risk.

22. Schindler argued below that Kirk had not pled fraud with particularity as required by Rule 9(b), but neither court reached the issue. See Pet. App. 46a-47a n.20.

under this section, *unless opposed by the Government* . . . .") (emphasis added).

The amended statute does not apply in this case. See Pet. Br. 11 n.6. But the government may opt to let future qui tam cases that it deems beneficial go forward even if based on public information, while allowing the bar to preclude cases contrary to the public interest, like this one. There is, accordingly, little weight to the government's concern that § 3730(e)(4), once given its ordinary meaning, could prevent suits "alleging that a contractor 'overcharged the government for substandard goods or services . . . or goods and services not actually provided.'" Gov't Br. 32 (quoting Pet. Br. 10 n.5). The government could allow such suits to proceed or, alternatively, intervene in them. In any event, if less than all of the material elements of the fraud alleged in such cases were in the public domain, the bar's "allegations or transactions" prong would not be satisfied and the bar could not be invoked. If the elements all were in the public domain, the relator would not deserve any reward.

CONCLUSION

The Court should vacate the Second Circuit's judgment and remand for further proceedings.

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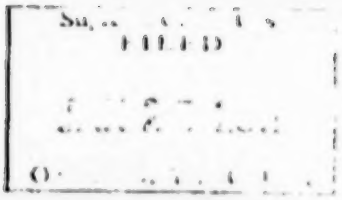
AMICUS CURIAE BRIEF

14



No. 10-188

In the Supreme Court of the United States

SCHINDLER ELEVATOR CORPORATION, PETITIONER

v.

UNITED STATES, EX REL. DANIEL KIRK

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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114

QUESTION PRESENTED

The False Claims Act (FCA), 31 U.S.C. 3729 *et seq.*, provides that "[n]o court shall have jurisdiction over [a *qui tam* action] based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media," unless the relator "is an original source of the information." 31 U.S.C. 3730(e)(4)(A). In this case, respondent's *qui tam* complaint was based in part on information provided by the Department of Labor (DOL) in response to three Freedom of Information Act (FOIA) requests submitted by respondent's wife. The question presented is as follows:

Whether DOL's responses to the relevant FOIA requests, or the internal searches the agency conducted to locate responsive records, constitute "administrative * * * report[s] [or] investigation[s]" within the meaning of the FCA's "public disclosure" bar.

TABLE OF CONTENTS

Page

Interest of the United States 1
Statement 2
Summary of argument 12
Argument:
A federal agency's response to a FOIA request is not itself an "administrative" "report" or "investigation" within the meaning of the FCA's "public disclosure" bar 14
A. The plain language of Section 3730(e)(4)(A) does not encompass FOIA responses 16
B. The history and purposes of the "public disclosure" bar reinforce the conclusion that a FOIA response is not itself an "administrative" "report" or "investigation" 26
C. Petitioner's policy arguments do not support its reading of Section 3730(e)(4)(A) 29
Conclusion 33

TABLE OF AUTHORITIES

Cases:

Cook County, Ill. v. *United States ex rel. Chandler*, 538 U.S. 119 (2003) 27
CPSC v. *GTE Sylvania, Inc.*, 447 U.S. 102 (1980) 15, 20, 21
Federal Open Mkt. Comm. of the Fed. Reserve Sys. v. *Merrill*, 443 U.S. 340 (1979) 6
Garcia v. *United States*, 469 U.S. 70 (1984) 18
Graham County Soil & Water Conservation Dist. v. *United States ex rel. Wilson*, 130 S. Ct. 1396 (2010) ..... *passim*

Cases—Continued: Page

Grand Cent. P'ship, Inc. v. *Cuomo*, 166 F.3d 473 (2d Cir. 1999) 22
Jones v. *United States*, 527 U.S. 373 (1999) 17
NLRB v. *Sears, Roebuck & Co.*, 421 U.S. 132 (1975) 22
Swift v. *United States*, 318 F.3d 250 (D.C. Cir.), cert. denied, 539 U.S. 944 (2003) 3
Thompson v. *North Am. Stainless, LP*, No. 09-291, 2011 WL 197638 (Jan. 24, 2011) 25
United States v. *Science Applications Int'l Corp.*, 626 F.3d 1257 (D.C. Cir. 2010) 30
United States v. *Sforza*, 326 F.3d 107 (2d Cir. 2003) 31
United States Dep't of Justice v. *Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) 6
United States Dep't of State v. *Ray*, 502 U.S. 164 (1991) 20
United States ex rel. Burlbaw v. *Orenduff*, 548 F.3d 931 (10th Cir. 2008) 30
United States ex rel. Doe v. *John Doe Corp.*, 960 F.2d 318 (2d Cir. 1992) 15
United States ex rel. Fine v. *MK-Ferguson Co.*, 99 F.3d 1538 (10th Cir. 1996) 15
United States ex rel. Haight v. *Catholic Healthcare West*, 445 F.3d 1147 (9th Cir.), cert. denied, 549 U.S. 1077 (2006) 24, 25, 29
United States ex rel. Lemmon v. *Envirocare of Utah, Inc.*, 614 F.3d 1163 (10th Cir. 2010) 30
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Cases—Continued: Page

United States ex rel. Mistick PBT v. *Housing Auth. of the City of Pittsburgh*, 186 F.3d 376 (3d Cir. 1999), cert. denied, 529 U.S. 1018 (2000) 16

United States ex rel. Rost v. *Pfizer, Inc.*, 507 F.3d 720 (1st Cir. 2007) 31

United States ex rel. Springfield Terminal Ry. Co. v. *Quinn*, 14 F.3d 645 (D.C. Cir. 1994) 26, 27

United States ex rel. Sutton v. *Double Day Office Servs., Inc.*, 121 F.3d 531 (9th Cir. 1997) 31

United States ex rel. Wisconsin v. *Dean*, 729 F.2d 1100 (7th Cir. 1984) 27

Watkins v. *United States*, 354 U.S. 178 (1957) 18

Zemansky v. *United States EPA*, 767 F.2d 569 (9th Cir. 1985) 22

Statutes, regulations and rules:

Act of Oct. 27, 1986, Pub. L. No. 99-562, § 2(d), 100 Stat. 3154 20

Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.* ... 15

False Claims Act, 31 U.S.C. 3729 *et seq.* 2

31 U.S.C. 3729(a) 30

31 U.S.C. 3729(a)(1) 2

31 U.S.C. 3729(a)(1)(B) (West 2010) 2

31 U.S.C. 3729(a)(2) 2

31 U.S.C. 3729(a)(C) 17

31 U.S.C. 3729(b) 30

31 U.S.C. 3729(b)(2)-(3) 30

31 U.S.C. 3730(a) 2

Statutes, regulations and rules– Continued: Page

31 U.S.C. 3730(b)(1) 2
31 U.S.C. 3730(b)(2) 3
31 U.S.C. 3730(b)(4) (1982) 27
31 U.S.C. 3730(e)(2)(A) 3
31 U.S.C. 3730(e)(2)(B) 3
31 U.S.C. 3730(e)(3) 3
31 U.S.C. 3730(e)(4) 17
31 U.S.C. 3730(d) 3
31 U.S.C. 3730(d)(4) 31
31 U.S.C. 3730(e)(4) 1, 4
31 U.S.C. 3730(e)(4)(A) 12, 15
31 U.S.C. 3730(e)(4)(B) 14, 29
Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, 123 Stat. 1617 2
§ 4, 123 Stat. 1625 2
Freedom of Information Act, 5 U.S.C. 552 5
5 U.S.C. 552(a)(1) 5, 23
5 U.S.C. 552(a)(2) 6, 23
5 U.S.C. 552(a)(2)(D) 23
5 U.S.C. 552(a)(3) 6
5 U.S.C. 552(a)(3)(A) 6, 23
5 U.S.C. 552(a)(3)(C) 6
5 U.S.C. 552(a)(3)(D) 6, 22
5 U.S.C. 552(a)(4)(F)(i) (Supp. II 2008) 21
5 U.S.C. 552(a)(4)(F)(ii) (Supp. II 2008) 21
5 U.S.C. 552(b) 6, 23
5 U.S.C. 552(b)(7) 21

Statutes, regulations and rules – Continued: Page

5 U.S.C. 552(e)(1) 21
Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 10104(j)(2), 124 Stat. 119 2
Veterans Employment Opportunities Act, Pub. L. No. 105-339, 112 Stat. 3182 5
§ 7, 112 Stat. 3188-3189 5
31 U.S.C. 1354(a)(1) 5
31 U.S.C. 1354(a)(2) 5
31 U.S.C. 1354(b) 5
Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. 4211 *et seq.* 4
38 U.S.C. 4212(a)(1) 4
38 U.S.C. 4212(a)(3) 4
38 U.S.C. 4212(b) 5
38 U.S.C. 4212(d) 4
31 U.S.C. 712(4) 18
41 C.F.R.:
Section 61-250.1(a) 4
Section 61-250.10(c) 4
Section 61-250.11 4
Section 61-300.1(a) 5
Section 61-300.10(c) 5
Section 61-300, App. A 5
48 C.F.R. (2009):
Section 22.1302(b) 5
Section 52.222-38 5

Rules: Page

Fed. R. Civ. P.:
Rule 8(a)(2) 31
Rule 9(b) 31
Rule 11 31

Miscellaneous:

American Heritage Dictionary of the English Language (4th ed. 2006) 17
Department of Labor:
The Freedom of Information Act (FOIA), http://www.dol.gov/dol/foia/main.htm (last visited Jan. 24, 2011) 23
The Freedom of Information Act Guide, http://www.dol.gov/dol/foia/guide6.htm (last visited Jan. 24, 2011) 22
Government Accountability Office:
About GAO Products, http://www.gao.gov/about/products/about-gao-reports.html (last visited Jan. 24, 2011) 18
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S. Rep. No. 345, 99th Cong., 2d Sess. (1986) 27
Webster's New Int'l Dictionary of the English Language (2d ed. 1958) 16, 17
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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

INTEREST OF THE UNITED STATES

This case involves the "public disclosure" bar of the False Claims Act (FCA), 31 U.S.C. 3730(e)(4). An overly broad construction of the bar would preclude *qui tam* actions in circumstances in which relators serve the valuable function of bringing to light fraud against the federal fisc; an unduly narrow construction risks requiring the government to share its recovery when the relator has added nothing of value to the government's enforcement efforts. Because the FCA is the primary mechanism by which the federal government recoups losses suffered through fraud, and because the government receives the bulk of any award obtained through a *qui tam* action, the United States has a substantial in-

terest in the proper construction of the "public disclosure" provision.

STATEMENT

1. The FCA, 31 U.S.C. 3729 *et seq.*, provides for the imposition of civil penalties and treble damages against any person who, *inter alia*, "knowingly presents, or causes to be presented, to an officer or employee of the United States Government * * * a false or fraudulent claim for payment or approval," 31 U.S.C. 3729(a)(1), or "knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim," 31 U.S.C. 3729(a)(1)(B) (West 2010).[1] The Attorney General may bring a civil action if he finds that a person has committed a violation. 31 U.S.C. 3730(a). Alternatively, a private person (known as a relator) may bring a "*qui tam*" civil action "for the person and for the United States Government." 31 U.S.C. 3730(b)(1). If a *qui tam* action results in the recovery of damages or

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[1] After this lawsuit was filed, Congress twice amended the FCA. See Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, 123 Stat. 1617; Patient Protection and Affordable Care Act, Pub. L. No 111-148, § 10104(j)(2), 124 Stat. 119. In general these amendments "make[] no mention of retroactivity, which would be necessary for [their] application to pending cases." *Graham County Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 130 S. Ct. 1396, 1400 n.1 (2010) (*Graham County*). However, Congress made the amendments to former Section 3729(a)(2) retroactive by specifying that new Section 3729(a)(1)(B) "shall take effect as if enacted on June 7, 2008, and apply to all claims under the [FCA] * * * that are pending on or after that date." Pub. L. No. 111-21, § 4, 123 Stat. 1625. Accordingly, the old version of Section 3729(a)(1) and the current version of Section 3729(a)(1)(B) apply in this case. Pet. App. 36a-37a. In all other respects, the brief references the pre-amendment version of the FCA except where otherwise noted.

civil penalties, the award is divided between the government and the relator. 31 U.S.C. 3730(d).

If a relator brings a *qui tam* action, the complaint is filed under seal and served upon the government, and "[t]he Government may elect to intervene and proceed with the action." 31 U.S.C. 3730(b)(2). If the government initially declines to intervene, the relator "shall have the right to conduct the action," but the district court "may nevertheless permit the Government to intervene at a later date upon a showing of good cause." 31 U.S.C. 3730(c)(3). Even in cases where the government declines to intervene, the United States retains authority to dismiss a *qui tam* suit "notwithstanding the objections of the person initiating the action." 31 U.S.C. 3730(c)(2)(A); see *Swift* v. *United States*, 318 F.3d 250, 251-254 (D.C. Cir.), cert. denied, 539 U.S. 944 (2003); see also 31 U.S.C. 3730(c)(2)(B) (government can also settle "notwithstanding the objections of the [relator] if the court determines" that the settlement "is fair, adequate, and reasonable").

As relevant here, the FCA's "public disclosure" provision states:

> (4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.[2]

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[2] As enacted, Section 3730(e)(4)(A) refers to the "Government Accounting Office," but "[i]t is undisputed that the intended referent was

> (B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

31 U.S.C. 3730(e)(4) (footnote omitted).

2. a. The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), 38 U.S.C. 4211 *et seq.*, requires covered federal contractors and subcontractors to take affirmative action to employ and advance the employment of veterans, and to submit annual reports to the Secretary of Labor (Secretary) providing information about the number of veterans the contractor employs.[3] 38 U.S.C. 4212(a)(1) and (d). Covered contractors must "report at least annually to the Secretary" on matters such as the number of employees, by job category and hiring location, who are "qualified covered veterans." 38 U.S.C. 4212(d); see 38 U.S.C. 4212(a)(3) (defining "qualified covered veteran"). Applicable regulations require each covered contractor to file "VETS-100 [R]eports" by September 30 of each year. 41 C.F.R. 61-250.10(c). A separate report must be submitted for each hiring location employing 50 or more persons. 41 C.F.R. 61-250.11.[4] A covered veteran who believes

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the *General* Accounting Office, now renamed the Government Accountability Office." *Graham County*, 130 S. Ct. at 1402 n.6.

[3] VEVRAA applies to all federal procurement contracts for non-personal services that exceed certain monetary thresholds. 38 U.S.C. 4212(a)(1); Pet. App. 5a n.1.

[4] The cited regulations apply to covered contracts entered into before December 1, 2003. 41 C.F.R. 61-250.1(a). For all relevant pur-

that a contractor has failed to comply with any VEVRAA-mandated contractual obligation may file a complaint with the Secretary. 38 U.S.C. 4212(b).

In 1998, Congress enacted the Veterans Employment Opportunities Act, Pub. L. No. 105-339, 112 Stat. 3182. In addition to amending VEVRAA in certain respects, the Act added a new section to the Appropriations Chapter of Title 31, prohibiting federal agencies from "obligat[ing] or expend[ing] funds * * * to enter into a contract [covered by VEVRAA] with a contractor from which a [VETS-100] report was required * * * with respect to the preceding fiscal year if such contractor did not submit such report." Pub. L. No. 105-339, § 7, 112 Stat. 3188-3189 (now codified at 31 U.S.C. 1354(a)(1)).[5] The regulations implementing this provision require each contractor to certify that, "[b]y submission of its offer, the offeror represents that, if it is subject to the reporting requirements [of VEVRAA] * * * it has submitted the most recent VETS-100 Report required by that [Act]." 48 C.F.R. 52.222-38 (2009); see 48 C.F.R. 22.1302(b) (2009).

b. In July 1966, Congress enacted the Freedom of Information Act (FOIA), 5 U.S.C. 522. FOIA divides agency records into three categories: some must be published in the Federal Register, 5 U.S.C. 552(a)(1);

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poses, the same requirements apply to covered contracts entered into (or modified) after that date. See 41 C.F.R. 61-300.1(a), 61-300.10(c), and 61-300, App. A.

[5] That statute also provides that the prohibition on contracting "shall cease to apply * * * on the date on which the contractor submits the report required by * * * section 4212(d)," 31 U.S.C 1354(a)(2), and directs the Secretary to maintain a database of contractors that are in compliance with the VETS-100 reporting requirement, 31 U.S.C. 1354(b).

some must be "available for public inspection and copying," 5 U.S.C. 552(a)(2); and all others must be furnished upon request, 5 U.S.C. 552(a)(3). See *Federal Open Mkt. Comm. of the Fed. Reserve Sys.* v. *Merrill*, 443 U.S. 340, 352 (1979). Under 5 U.S.C. 552(a)(3), federal agencies generally must make records available to "any person" who has submitted a "request for [such] records," unless a statutory exemption applies. 5 U.S.C. 552(a)(3); see 5 U.S.C. 552(b); *United States Dep't of Justice* v. *Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 754-755 (1989). In responding to a proper request under FOIA, an agency "shall make the records promptly available," and "shall make reasonable efforts to search for the records." 5 U.S.C. 552(a)(3)(A) and (C). The term "search" is defined to mean "to review * * * agency records for the purpose of locating those records which are responsive to a request." 5 U.S.C. 552(a)(3)(D).

3. Petitioner manufactures, installs, and maintains elevators in buildings and has numerous federal contracts that are subject to VEVRAA. Respondent is a Vietnam-era veteran and former employee of petitioner. In March 2005, respondent filed a *qui tam* action against his former employer under the FCA. The United States declined to intervene and, in June 2007, respondent amended his complaint and proceeded with the litigation. Pet. App. 4a-5a, 49a-50a.

a. Respondent alleged that petitioner had bid for and was awarded contracts covered by VEVRAA, and had submitted claims for payment on those contracts, even though petitioner knew that it had not filed the required VETS-100 Reports in some years and that it had filed false VETS-100 Reports in other years. See Pet. App. 10a-11a; J.A. 33a-40a. More specifically, re-

spondent alleged that petitioner had failed to file any VETS-100 Reports until 2004—only after respondent alerted the Department of Labor (DOL) to petitioner's noncompliance.[6] J.A. 14a-15a. Respondent alleged that petitioner had then deliberately filed false VETS-100 Reports for 2004-2006, and had filed untimely and false reports for 2002. J.A. 15a, 34a-37a; Pet. App. 10a. Respondent alleged that the filed reports were false because, *inter alia*, petitioner had failed to file separate reports for each hiring location employing more than 50 persons (including the location where respondent was employed); had "grossly understate[d]" the number of covered veterans in each job category (respondent alleged in particular that petitioner's VETS-100 Reports listed "zero" covered veterans in several job categories, but that respondent was aware of (and named in the complaint) covered veterans so employed); and had failed to collect the information necessary to submit accurate reports. Pet. App. 10a; J.A. 34a-37a. Respondent also alleged that petitioner had failed to file any VETS-100 Reports for 1998-2001 and 2003. J.A. 33a; Pet. App. 10a.

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[6] In April 2004, respondent filed an employment-discrimination complaint against petitioner with DOL's Office of Federal Contract Compliance Programs (OFCCP), primarily alleging that petitioner had demoted and constructively terminated him despite his status as a Vietnam-era veteran, in violation of VEVRAA. Pet. App. 4a. On February 7, 2005, the OFCCP District Office found insufficient evidence to support respondent's claim (Supp. App. 56-65), and that ruling was affirmed by the National Office in 2009 (J.A. 106a-120a). The agency's final decision focused primarily on respondent's claims of discrimination, but it also stated that petitioner had "submitted the then current VETS-100 Report to OFCCP," and that respondent's "accusation that [petitioner] filed false reports [was] not substantiated with any evidence other than [his] statement." J.A. 115a, 116a.

Respondent's allegations were based in part on information he had received from DOL in response to three FOIA requests. In November 2004, respondent's wife submitted a FOIA request for copies of all VETS-100 Reports filed by petitioner for the years 2002 through 2004. Supp. App. 99. On February 11, 2005, DOL responded with a one-page cover letter, stating that "[a] search of records produced the enclosed reports for the year 2004. Under the Privacy Act information was redacted. No records responsive to your request for the years 2002 and 2003 were found." *Id.* at 100. Copies of redacted 2004 VETS-100 Reports were enclosed. *Id.* at 101-103. In January 2005, respondent's wife submitted a second FOIA request for copies of all VETS-100 Reports filed by petitioner for the years 1998 through 2001. *Id.* at 105. On September 29, 2005, DOL responded with another one-page cover letter, stating that "[a] search of records produced the enclosed reports for the year 2001. Under the Privacy Act information was redacted. No records responsive to your request for the years [1998-2000] were found." *Id.* at 106. Again, copies of the redacted VETS-100 Reports were enclosed.[7] *Id.* at 107-134. In April 2007, respondent's wife submitted a third FOIA request for petitioner's VETS-100 Reports for 2005 and 2006. *Id.* at 136-137. On May 14, 2007, DOL responded by e-mail stating that it had "identified" the requested records and was attaching them to the e-mail. *Id.* at 138-206.

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[7] Each VETS-100 Report generally spans two calendar years, as the applicable regulations require that VETS-100 Reports be filed no later than September 30 of each year. See p. 4 & note 4, *supra*. The enclosed reports were actually for the year ending September 30, 2002. Supp. App. 107-134. This brief refers to the relevant VETS-100 Reports based on the year the report was filed.

b. In September 2007, petitioner moved to dismiss respondent's complaint on several grounds, including the FCA's "public disclosure" bar. As relevant here, the district court characterized respondent's complaint as setting forth two different ways in which petitioner had violated the FCA: (i) by the alleged filing of knowingly false VETS-100 Reports for certain years, and (ii) by the alleged knowing failure to file any reports for other years. Pet. App. 64a. On the false-report allegations, the district court held that respondent had failed to state a claim under the FCA because (in the court's view) petitioner was not required to certify as a condition of payment that its annual VETS-100 Reports were accurate. *Id.* at 66a-67a. For the failure-to-file allegations, the court concluded that respondent had stated a valid claim under the FCA. *Id.* at 65a-66a. The court held, however, that it lacked jurisdiction to consider that claim because respondent's allegations were based upon information contained in DOL's responses to respondent's FOIA requests and respondent was not an original source of that information. *Id.* at 70a-87a. The court concluded, *inter alia*, that DOL's responses to the FOIA requests were "public" disclosures, *id.* at 75a-79a, and that, because DOL in responding to each FOIA request had "conducted a search and prepared a letter detailing that search and its results," the letters and searches qualified as "administrative" "report[s]" and "investigation[s]" within the meaning of Section 3730(e)(4)(A), *id.* at 81a-84a.

4. The court of appeals reversed. Pet. App. 1a-48a. The court explained that, in order for the "public disclosure" bar to apply, there must be a "'public disclosure' of the information on which the allegation of fraud rests, and this 'public disclosure' must occur through one of

the sources enumerated in the statute." *Id.* at 14a. On the first question, the court of appeals agreed with "every circuit to have considered this issue" that information produced in response to a FOIA request meets the "public disclosure" requirement because it "becomes public once it is received by the requester." *Id.* at 15a-16a (citing cases).

On the second question, the court of appeals acknowledged that other circuits "have come to differing conclusions regarding whether materials produced by a government agency pursuant to a FOIA request are administrative reports or investigations within the meaning of the FCA's jurisdictional bar." Pet. App. 17a. After examining the approaches taken by other courts of appeals, *id.* at 17a-23a, the court concluded that "whether a document obtained through a FOIA request is an enumerated source within the meaning of [Section] 3730(e)(4)(A) depends on the nature of the document itself," *id.* at 23a.

The court of appeals explained that, read in context, the term "report" in Section 3730(e)(4)(A) "connotes the compilation or analysis of information with the aim of synthesizing that information in order to serve some end of the government, as in a 'hearing' or 'audit.'" Pet. App. 24a. The term "investigation," the court observed, likewise "implies a more focused and sustained inquiry directed toward a government end." *Ibid.* The court explained that FOIA, in contrast, "is simply a mechanism for granting the public access to information in the possession of an agency." *Id.* at 26a. The court acknowledged that "an agency responding to a FOIA request conducts a review of its records and compiles all responsive documents before providing them to the requester," but it emphasized that the agency "does *not* * * * syn-

thesize the documents or their contents with the aim of itself gleaning any insight or information, as, in contrast, it necessarily would in conducting a 'hearing' or 'audit.'" *Id.* at 25a-26a.

While recognizing the limitations of the relevant drafting history, Pet. App. 26a-27a (citing *Graham County Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 130 S. Ct. 1396, 1407-1410 (2010)), the court of appeals found it "clear that the 1986 [FCA] amendments * * * were a reaction against the previous version of the statute which had barred any *qui tam* action that was based on information in the possession of the government," *id.* at 27a. The court also emphasized that the "facts of this case belie the assertion that individuals who are not original sources and who obtain information through FOIA requests will generally * * * be opportunistic litigators." *Id.* at 29a. The court explained that respondent "became suspicious based on his own experience as a Vietnam veteran employed by [petitioner], that [petitioner] was not in compliance with VEVRAA," and that respondent's receipt of the relevant documents through FOIA requests simply enabled him "to put the pieces of his lawsuit together." *Id.* at 30a. The court concluded that the VETS-100 Reports disclosed in this case "are not enumerated sources" and that "the FCA's jurisdictional bar does not apply." *Id.* at 33a.[8]

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[8] The court of appeals further held that respondent had stated a claim under the FCA both with respect to petitioner's alleged failure to file VETS-100 Reports in certain years, and with respect to petitioner's alleged filing of false reports in other years. Pet. App. 34a-47a. Petitioner did not seek review of that aspect of the court's decision.

SUMMARY OF ARGUMENT

1. Although the release of federal records in response to a FOIA request constitutes a "public disclosure" within the meaning of 31 U.S.C. 3730(e)(4)(A), the FCA does not bar all *qui tam* suits based upon publicly disclosed information, or even all *qui tam* suits based upon information that has been released into the public domain by government officials. As the court of appeals correctly held, the determination whether a particular FOIA release effects the public disclosure of an "administrative * * * report [or] investigation" depends on the nature of the agency records that are disclosed.

Under that approach, the VETS-100 Reports that respondent obtained through FOIA are not "administrative" "reports." This Court has recognized that the term "administrative" in Section 3730(e)(4)(A) "is most naturally read to describe the activities of governmental agencies," *Graham County Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 130 S. Ct. 1396, 1402 (2010), and the VETS-100 Reports were prepared by a private entity (petitioner) rather than by any governmental unit. The VETS-100 Reports also do not suggest the existence of any government "investigation" (let alone any government "audit" or "hearing"). The documents that respondent obtained through FOIA therefore fall outside the coverage of Section 3730(e)(4)(A). Petitioner cannot avoid that conclusion by characterizing DOL's FOIA response itself as an "administrative" "report," or by treating the agency's search for responsive records as an "administrative" "investigation."

2. a. Read in context, the terms "report" and "investigation" cannot bear the expansive reading petitioner advocates. The term "report" is best understood

to refer to a formal account of a government inquiry or analysis, such as a hearing, audit, or investigation. The term "investigation," in turn, is naturally read to refer to an official probe designed to uncover the truth of a matter, usually some form of wrongdoing.

Congress could easily have drafted Section 3730(e)(4)(A) to cover *all* public disclosures emanating from specified governmental sources, but Congress instead limited the provision's coverage to certain governmental "report[s]," "hearing[s]," "audit[s]," and "investigation[s]." Taken together, those terms reflect Congress's focus on situations in which the government is conducting, or has completed, some focused inquiry or analysis concerning the relevant facts. Acceptance of petitioner's theory—under which Section 3730(e)(4)(A) would cover federal agency disclosures of documents (like those at issue here) that were prepared by private entities and do not reflect any federal inquiry or analysis—would effectively redraw the balance struck by Congress.

b. A FOIA search is not an "investigation," and a FOIA response is not a "report," within the meaning of Section 3730(e)(4)(A). In discharging its obligations under FOIA, a federal agency reviews documents to determine whether they are responsive to a request, and to ascertain whether a statutory exemption applies—not to draw a conclusion about any primary conduct that the documents may describe. In addition, an agency can make records available under FOIA in a variety of ways, some of which would not involve an "investigation" or result in a "report" under any plausible definition of those terms. There is no reason to think that Congress intended Section 3730(e)(4)(A)'s application to turn on the method of public disclosure.

3. The statutory history and purposes of the "public disclosure" bar reinforce the conclusions that a FOIA response is not an "administrative" "report," and that an agency's search for responsive documents is not an "administrative" "investigation." Petitioner's approach would subvert Congress's effort to strike an appropriate balance between preventing "parasitic" *qui tam* suits and encouraging relators who make meaningful contributions to the government's anti-fraud efforts. And petitioner is simply wrong in arguing that Congress sought to limit the *qui tam* mechanism to relators who possess "firsthand knowledge" of fraud. Rather, Congress required "direct and independent" knowledge, 31 U.S.C. 3730(e)(4)(B), only in the limited subset of cases involving a prior public disclosure through one of the sources enumerated in Section 3730(e)(4)(A).

4. Petitioner's policy arguments misunderstand important aspects of the FCA, ignore others, and have little to do with the question presented. Petitioner seeks in essence to use the "public disclosure" bar to counteract the practical effects of what petitioner perceives to be unduly broad theories of substantive FCA liability. Section 3730(e)(4)(A) is neither intended nor well suited for that purpose.

ARGUMENT

A FEDERAL AGENCY'S RESPONSE TO A FOIA REQUEST IS NOT ITSELF AN "ADMINISTRATIVE" "REPORT" OR "INVESTIGATION" WITHIN THE MEANING OF THE FCA'S "PUBLIC DISCLOSURE" BAR

The FCA does not categorically bar all *qui tam* actions that are based upon publicly disclosed information, or even all *qui tam* suits based upon information that was publicly disclosed by government officials. Instead,

Congress confined the "public disclosure" bar to "allegations or transactions" that have been publicly disclosed in (1) "a criminal, civil, or administrative hearing," (2) "a congressional, administrative, or [GAO] report, hearing, audit, or investigation," or (3) "the news media." 31 U.S.C. 3730(e)(4)(A); *Graham County Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 130 S. Ct. 1396, 1401-1402 (2010) (*Graham County*).

Whether a disclosure is sufficiently "public," and whether the relevant "allegations or transactions" are disclosed through one of the enumerated means, are two distinct inquiries. A "public disclosure" occurs whenever relevant information is provided to even a single "stranger to the fraud" outside the government, so long as the outsider is not precluded from further disseminating the information. See, *e.g.*, *United States ex rel. Fine* v. *MK-Ferguson Co.*, 99 F.3d 1538, 1544-1545 (10th Cir. 1996); *United States ex rel. Doe* v. *John Doe Corp.*, 960 F.2d 318, 322-323 (2d Cir. 1992); see also *CPSC* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108-109 (1980) ("as a matter of common usage," the term "public disclosure" under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*, includes disclosure to FOIA requester). Allegations or transactions of fraud can enter the public domain in any number of ways: they can be broadcast in a news report, disclosed in a criminal complaint, posted on a company's website, filed in a public library, or exposed by a corporate insider. As both parties to this case recognize, disclosure under FOIA is one such method of public disclosure. Resp. Br. 18; Pet. App. 15a-16a.

Section 3730(e)(4)(A), however, applies only to the "public disclosure of allegations or transactions in certain specified sources." *Graham County*, 130 S. Ct. at

1400. The VETS-100 Reports that respondent obtained under FOIA were not themselves "administrative" "report[s]" within the meaning of that provision. As used in Section 3730(e)(4)(A), the term "administrative" "is most naturally read to describe the activities of governmental agencies." *Id.* at 1402. The VETS-100 Reports were prepared by a private entity (petitioner) rather than by any government actor, and they did not reveal the existence of any "administrative" "investigation." As the court of appeals correctly held, petitioner cannot evade that limit on the FCA's "public disclosure" bar by characterizing DOL's search for responsive records as an "investigation," or by describing the agency's FOIA response as a "report."

A. The Plain Language Of Section 3730(e)(4)(A) Does Not Encompass FOIA Responses

1. Contrary to petitioner's contentions (Br. 17-22), the words "report" and "investigation" do not have a single "ordinary meaning" that encompasses the FOIA responses at issue here.

a. The term "report" can refer to "something that gives information: a [usually] detailed account or statement," a "notification." See *Webster's Third New Int'l Dictionary of the English Language* 1925 (1971) (*Webster's Third*) (cited at Pet. Br. 19); *United States ex rel. Mistick PBT* v. *Housing Auth. of the City of Pittsburgh*, 186 F.3d 376, 383 (3d Cir. 1999), cert. denied, 529 U.S. 1018 (2000). But the term is also commonly defined as "a [usually] formal account of the results of an investigation given by a person or group authorized or delegated to make the investigation," *Webster's Third* 1925; "[a]n account or relation, [especially] of some matter specially investigated," *Webster's New Int'l Dictionary of the*

English Language 2113 (2d ed. 1958) (*Webster's New Int'l*); and "[a]n account brought by one person to another, [especially] of some matter specially investigated," "[a] formal statement of the results of an investigation," 8 *The Oxford English Dictionary* 650 (2d ed. 1989).

Although the term "investigation" can refer to a "detailed examination," *Webster's Third* 1189 (cited at Pet. Br. 20), it is also defined to mean a "searching inquiry" and "an official probe," *ibid.* See *American Heritage Dictionary of the English Language* 920 (4th ed. 2006) ("[a] detailed inquiry or systematic examination"); 13 *The Oxford English Dictionary* 47 ("systematic examination," "careful and minute research"); *Webster's New Int'l* 1306 ("process of inquiring into or tracking down; thorough inquiry; research"). "Investigation" is a synonym for "inquiry," along with "inquest," "inquisition," "probe," and "research"—"nouns [that] denote a quest for knowledge, data, or truth." *Webster's Third* 1167. "Research" involves "careful, prolonged study, [especially] to uncover new knowledge." *Ibid.* And a "probe" "may apply to any deep, painstaking inquiry to discover something wrong or improper." *Ibid.*[9]

b. As this Court recently confirmed in the context of the "public disclosure" bar, "[s]tatutory language has meaning only in context." *Graham County*, 130 S. Ct. at 1404; see *Jones* v. *United States*, 527 U.S. 373, 389 (1999) ("Statutory language must be read in context and a phrase 'gathers meaning from the words

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[9] Other provisions of the FCA use the term "investigation" in this more targeted sense. See, *e.g.*, 31 U.S.C. 3729(a)(C) (referencing "the existence of an investigation into [an FCA] violation"); 31 U.S.C. 3730(c)(4) (referencing "the Government's investigation or prosecution of a criminal or civil matter").

around it.'") (citation omitted). The terms "report" and "investigation" are illuminated by the adjectives—"congressional, administrative, or [GAO]"—that modify those nouns. As this Court recognized in *Graham County*, that statutory context indicates that the word "administrative" in the "public disclosure" bar is limited to the "activities of governmental agencies." 130 S. Ct. at 1402; see p. 16, *supra*. That context also suggests that Section 3730(e)(4)(A)'s reference to "administrative" "report[s]" and "investigation[s]" is confined to agency reports and investigations analogous to those that Congress and the GAO would issue or conduct.

The terms "congressional report" and "congressional investigation" denote a far more specific meaning than "something that gives information" (Pet. Br. 19) or "a detailed examination" (*id.* at 20). Cf. *Garcia* v. *United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history, we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill."); *Watkins* v. *United States*, 354 U.S. 178, 188, 198 (1957) (finding the "Bill of Rights" applicable to "congressional investigations"). The same is true with respect to the GAO. Cf. GAO, *About GAO Reports*, http://www.gao.gov/about/products/about-gao-reports.html (last visited Jan. 24, 2011) (explaining that one of "GAO's primary products is reports, often called 'blue books'"); GAO, *Our Products*, http://www.gao.gov/about/products (describing the process for releasing "GAO reports" to the public); 31 U.S.C. 712(4) ("The Comptroller General shall * * * make an investigation and report ordered by either House of Congress or a committee of Congress having jurisdiction over revenue, appropriations, or expenditures"). Under petitioner's expansive definitions of "re-

port" and "investigation," however, a congressional staffer's response to a press inquiry would be a congressional "report," and her search for information with which to respond would be an "investigation."

c. If Congress had intended Section 3730(e)(4)(A) to encompass all public disclosures effected by specified governmental units, the provision could have been drafted in far simpler fashion: "No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions [by a congressional, administrative, or GAO employee] or from the news media." Instead, Congress limited Section 3730(e)(4)(A)'s coverage to public disclosures in certain governmental "report[s], hearing[s], audit[s], or investigation[s]." Taken together, those terms reflect a focus on situations in which the government is conducting, or has completed, some focused inquiry or analysis concerning the relevant facts.

Congress may have viewed the existence of an ongoing or concluded governmental inquiry or analysis as an indication that *qui tam* suits are unnecessary because the government is capable of pursuing any potentially meritorious fraud claims. Or Congress may have viewed relators who seek to exploit prior government inquiry or analysis as more "parasitic," and therefore less worthy of reward, than relators who recognize the previously unappreciated significance of "raw" information released by the government into the public domain. In any event, the clear import of the language Congress chose is that at least *some* public disclosures by the government will not trigger Section 3730(e)(4)(A)'s jurisdictional bar. The VETS-100 Reports at issue here, which were prepared by a private entity and reflect no govern-

mental inquiry or analysis, fall squarely within that category.

2. Viewed in the proper statutory context, a federal agency's response to a FOIA request is not itself an "administrative" "report," and the agency's antecedent search for responsive records is not an "administrative" "investigation."

a. FOIA had been in effect for 20 years when Section 3730(e)(4)(A) was amended in 1986, and the 1986 FCA amendments themselves reflect Congress's awareness of the obligations that FOIA imposes.[10] In 1986 (as now), however, an agency's search for records was not referred to as a "FOIA investigation," nor was an agency's response to a FOIA request called a "FOIA report." Although petitioner finds it significant that the court of appeals referred to "FOIA reports" in summarizing the district court's holding (Br. 20 (citing Pet. App. 12a)), none of this Court's opinions discussing FOIA has used the term "FOIA report" or any variant thereof. Some documents requested or released under FOIA are naturally described as "reports," but the act of release has not been so characterized. See, *e.g.*, *United States Dep't of State* v. *Ray*, 502 U.S. 164, 168, 173, 177, 179 (1991) (referring to FOIA request seeking "reports" of immigration interviews, but referring to the

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[10] At the same time Congress amended the "public disclosure" bar to include the terms "administrative" "report" and "investigation," it also added an exemption from disclosure under FOIA for certain information furnished by a person who had committed an FCA violation. See Act of Oct. 27, 1986, Pub. L. No. 99-562, § 2(d), 100 Stat. 3154; cf. *CPSC*, 447 U.S. at 109 ("That Congress was aware of the relationship between [Section 6 of the CPSA] and the FOIA when it enacted the CPSA is exhibited by the fact that Congress * * * specifically incorporated" the FOIA exemptions in that provision.).

agency's response as a "production" of documents); *CPSC*, 447 U.S. at 106, 107 (discussing a FOIA request for accident "reports," but referring to the agency's response as a "release" of documents).

Contrary to petitioner's suggestion (Br. 20-21), searches performed in response to FOIA requests are not commonly referred to as "FOIA investigations." This Court has never used that terminology, and the two unpublished district court cases petitioner cites (each of which uses the term "FOIA investigation" once) are outliers. A search for "FOIA investigation" in all federal cases available on Westlaw reveals no other decision using that phrase, strongly suggesting that this is far from "ordinary usage" (*id.* at 20).[11] Indeed, although FOIA itself repeatedly uses the terms "investigation" and "report," it never uses those terms to refer to the agency's search for responsive documents or its response to a FOIA request. See, *e.g.*, 5 U.S.C. 552(b)(7) (referring to "criminal" and "law enforcement investigations"); 5 U.S.C. 552(a)(4)(F)(i) (Supp. II 2008) (referring to an "investigation" by "Special Counsel"); 5 U.S.C. 552(e)(1) (requiring submission of a "report" to the Attorney General compiling statistics regarding "determinations" made and requests "processed" under FOIA); 5 U.S.C. 552(a)(4)(F)(ii) (Supp. II 2008) (referring to an annual "report" to be submitted to Congress).

b. A FOIA response is not a "report," and a FOIA search is not an "investigation," because the federal agency is not charged with uncovering the truth of any matter, let alone inquiring into wrongdoing. That is true even when (unlike in this case) the agency engages in an

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[11] By the same token, the Westlaw search used to reach that conclusion would not naturally be described as an "investigation."

exhaustive search for responsive documents, including an examination of statutory exemptions and the redaction of information, and then duplicates thousands of records and provides a lengthy cover letter explaining why certain documents (or portions thereof) are exempt. See Pet. Br. 30-33. The touchstone is not how hard the government must work to respond to the request, but the nature of the government's efforts.

FOIA requires federal agencies to search their records "for the purpose of locating those records which are responsive to a request." 5 U.S.C. 552(a)(3)(D). It does not require the government to create new records, see *NLRB* v. *Sears, Roebuck & Co.*, 421 U.S. 132, 161-162 (1975), to answer questions posed by the requester, see *Zemansky* v. *United States EPA*, 767 F.2d 569, 573-574 (9th Cir. 1985), or to analyze information, DOL, *The Freedom of Information Act Guide*, http://www.dol.gov/dol/foia/guide6.htm (last visited Jan. 24, 2011). All that is required is a "reasonable search" for responsive records. *Grand Cent. P'ship, Inc.* v. *Cuomo*, 166 F.3d 473, 488-489 (2d Cir. 1999). And a "search" within the meaning of FOIA is a "review" of records "for the purpose of locating those records which are responsive to a request." 5 U.S.C. 552(a)(3)(D).

An agency's "review" of records in response to a FOIA request is fundamentally different from an "investigation." In this case, for example, in processing the relevant FOIA requests, DOL simply located the VETS-100 Reports that petitioner had previously submitted, determined what redactions were appropriate, and released the redacted documents to the requester. DOL did not purport to investigate, or to express a view concerning, any aspect of petitioner's *actual* operations (*e.g.*, how many veterans petitioner in fact employed, or

whether petitioner was in compliance with its VEVRAA obligations). DOL's review of records for the sole purpose of responding to a document request cannot reasonably be characterized as an "investigation" within the meaning of Section 3730(e)(4)(A).[12]

c. A federal agency has discretion to respond to a FOIA request in various ways. Some legally permissible means of making agency records available to the public would not involve an "investigation," or result in a "report," even under petitioner's expansive definition of those terms. Upon receiving a qualifying request for records, an agency must make those records "promptly available to any person" unless a statutory exemption applies. 5 U.S.C. 522(a)(3)(A) and (b). Even without such a request, certain categories of documents must be published in the Federal Register, 5 U.S.C. 552(a)(1), and others must be "available for public inspection and copying" in a reading room open to the public or, for certain documents, through "electronic means," 5 U.S.C. 552(a)(2). If an agency determines that a record previously released in response to a FOIA request is "likely to become the subject of subsequent requests," for example, it must make that record available in a reading room or electronically. See 5 U.S.C. 552(a)(2)(D); cf. DOL, *Freedom of Information Act*

[12] This is true even in the unusual circumstance where the FOIA response itself, when coupled with other information, suggests that fraud has occurred. For example, DOL's responses indicating that petitioner had not filed VETS-100 Reports for certain years, coupled with respondent's knowledge that petitioner had federal contracts subject to the VETS-100 reporting requirement during the relevant years, suggested that petitioner was ineligible for those contracts and ineligible for payment under them. But the degree to which a particular FOIA response happens to disclose "allegations or transactions" of fraud cannot transform the character of the federal agency's actions.

(FOIA), http://www.dol.gov/dol/foia/main.htm (last visited Jan. 24, 2011) (encouraging individuals to search DOL's website before making a FOIA request because DOL has already "made hundreds of thousands of pages of information immediately available to [the public] through [its] Web site"). In those circumstances, the process by which the government makes records available to the public clearly involves no "investigation" or "report."

Even when the pertinent records are not available in a reading room or electronically, the agency might respond informally to a FOIA request. In *United States ex rel. Haight* v. *Catholic Healthcare West*, 445 F.3d 1147, 1149 (9th Cir.), cert. denied, 549 U.S. 1077 (2006) (*Haight*), for example, the relator submitted a FOIA request seeking a copy of a grant application submitted to the National Institutes of Health (NIH). NIH responded by informing the relator that she could obtain a copy of the grant application from a private hospital; the relator walked to the hospital and obtained a copy of the application herself. *Ibid.* As the court of appeals in *Haight* observed, "[t]he specific facts of this case illustrate how ill-fitting the labels of 'report' or 'investigation' can be for responses to FOIA requests." *Id.* at 1155.

There is no reason to think that Congress intended the applicability of the FCA's jurisdictional bar to vary depending on the precise method of disclosure employed by a federal agency. Petitioner's proposed broad definitions of "report" and "investigation," however, would produce that untoward result. Under petitioner's approach, if DOL provides copies of VETS-100 Reports to a FOIA requester under 5 U.S.C. 552(a)(3), the agency has conducted an "administrative" "investigation" and

issued an "administrative" "report," and a suit based upon the VETS-100 Reports would be barred unless the relator qualifies as an "original source." But if DOL makes all VETS-100 Reports available electronically (or in a reading room), there would be no "investigation" or "report" that could trigger the "public disclosure" bar even under the broadest reading of Section 3730(e)(4)(A). The precise means by which an agency chooses to make certain records available to the public should not determine whether specific disclosures are encompassed by Section 3730(e)(4)(A).

d. Petitioner urges a bright-line rule to save the courts from "fact-dependent inquiries." Br. 21. But, even under petitioner's approach, there is no bright line—not every mechanism through which an agency discharges its obligations under FOIA can be characterized as a "report" or an "investigation," however broadly those terms are defined. In any event, courts regularly engage in "fact-dependent inquiries" when government documents are publicly disclosed through mechanisms other than FOIA. The court of appeals correctly focused on whether the released records at issue in this case (*i.e.*, petitioner's VETS-100 Reports) fall within the sources enumerated in Section 3730(e)(4)(A), rather than on the precise method by which the information entered the public domain. See Pet. App. 23a, 32a-33a; accord *Haight*, 445 F.3d at 1153 ("A response to a FOIA request is not necessarily a report or investigation, although it can be, if it is from one of the sources enumerated in the statute."). That would be the proper approach if the agency had released the VETS-100 Reports unilaterally rather than in response to a FOIA request, and there is no reason for a different analysis here. Cf. *Thompson* v. *North Am. Stainless*,

LP, No. 09-291, 2011 WL 197638, at *4 (Jan. 24, 2011) ("[A] preference for clear rules cannot justify departing from statutory text.").

B. The History And Purposes Of The "Public Disclosure" Bar Reinforce The Conclusion That A FOIA Response Is Not Itself An "Administrative" "Report" Or "Investigation"

1. Since its original enactment during the Civil War, the FCA has authorized *qui tam* relators to sue for the United States and for themselves, and to obtain a share of the government's recovery if the suit is successful. See *Graham County*, 130 S. Ct. at 1400. Such private actions supplement government enforcement efforts, and thereby deter fraud, by harnessing "the strong stimulus of personal ill will or the hope of gain." *United States ex rel. Springfield Terminal Ry. Co.* v. *Quinn*, 14 F.3d 645, 649 (D.C. Cir. 1994) (*Springfield Terminal*) (citation omitted).

Prior to the recent amendments (see note 1, *supra*) Congress had twice amended the FCA's *qui tam* provisions in an effort to achieve "the golden mean between adequate incentives for whistle-blowing insiders with genuinely valuable information and discouragement of opportunistic plaintiffs who have no significant information to contribute of their own." *Springfield Terminal*, 14 F.3d at 649. In *United States ex rel. Marcus* v. *Hess*, 317 U.S. 537, 545-548 (1943) (*Marcus*), this Court held that the FCA in its then-current form authorized a *qui tam* suit brought by a relator who had derived his allegations of fraud from a prior federal indictment. In 1943, shortly after the *Marcus* decision, Congress amended the FCA to divest the federal courts of jurisdiction over *qui tam* suits that were "based on evidence

or information the Government had when the action was brought." 31 U.S.C. 3730(b)(4) (1982). Although the Senate version of the 1943 amendments contained an exception to the jurisdictional bar for suits brought by relators who were the "original source" of the government's information, that provision was dropped from the enacted version without explanation. S. Rep. No. 345, 99th Cong., 2d Sess. 12 (1986) (*Senate Report*). Thus, from 1943 to 1986, *qui tam* suits based on information in the government's possession were precluded even when the government had received the information from the relator himself. See, *e.g.*, *United States ex rel. Wisconsin* v. *Dean*, 729 F.2d 1100, 1104-1107 (7th Cir. 1984) (*Dean*) (finding no jurisdiction to adjudicate the State of Wisconsin's *qui tam* suit alleging Medicaid fraud that the State had uncovered and reported to the federal government as required by law).

In the 1980s, Congress concluded that the absolute bar against *qui tam* suits based on information already in the federal government's possession had precluded an unduly broad range of potentially valuable suits. See *Springfield Terminal*, 14 F.3d at 650-651. In 1986, as part of a broader reform of the FCA, Congress replaced the so-called "government-knowledge bar" with Section 3730(e)(4). "Because Congress was concerned about pervasive fraud in 'all [g]overnment programs,' it allowed private parties to sue even based on information already in the [g]overnment's possession." *Cook County, Ill.* v. *United States ex rel. Chandler*, 538 U.S. 119, 133 (2003) (quoting *Senate Report* 2). Congress relaxed the prior jurisdictional bar both by limiting it to cases in which the pertinent information had been publicly disclosed through one of several enumerated means, and by creating an exception for "original

source[s]" even in circumstances where the "public disclosure" bar would otherwise apply.

2. This Court stated in *Graham County* that "the drafting history of the public disclosure bar raises more questions than it answers." 130 S. Ct. at 1407. At a minimum, however, two points clearly emerge from that history.

First, Congress sought to strike a balance between preventing "parasitic" *qui tam* suits and encouraging suits that provide the government with valuable information about fraud against the federal fisc. *Graham County*, 130 S. Ct. at 1406-1407. On the one hand, Congress sought to "stifl[e]" the "quintessential 'parasitic'" lawsuit, like the one that was allowed to proceed in *Marcus*, where the relator has contributed nothing to the discovery of fraud but has simply exploited the prior investigative efforts of federal officers. See *ibid.* On the other hand, Congress recognized that relators can often provide valuable assistance to the government's anti-fraud efforts, even when a relator's primary contribution lies in recognizing the previously unappreciated significance of information already in the government's possession.

The enumerated categories of governmental disclosures that can trigger the jurisdictional bar reflect Congress's focus on situations in which some process of government inquiry or analysis has been completed or is underway. See pp. 19-20, *supra*. If all FOIA responses and searches were treated as administrative "report[s]" or "investigation[s]," Section 3730(e)(4)(A) would preclude *qui tam* suits based on disclosures of "raw" information that is contained in government files but has not been subjected to government inquiry or analysis. That approach "would damage the fraud-detection purpose of

the FCA while failing to serve its twin goal of preventing opportunism." *Haight*, 445 F.3d at 1155.

Second, Congress did not prohibit all *qui tam* suits by individuals who lack "direct and independent" knowledge of fraud. Petitioner's repeated insistence (see, *e.g.*, Br. 2-3, 14, 34-35, 49) that only relators with "firsthand knowledge" can file *qui tam* actions mistakes the original-source *exception* for a jurisdictional requirement. Congress certainly could have required all relators to have "direct and independent" (or "firsthand") knowledge of the fraud. It could also have mitigated the concern raised by cases like *Dean* by simply creating an original-source exception while retaining the government-knowledge bar. But Congress pursued a different course, requiring "direct and independent" knowledge, 31 U.S.C. 3730(e)(4)(B), only in the limited subset of cases involving a prior public disclosure through one of the sources enumerated in Section 3730(e)(4)(A). Accordingly, unless the allegations or transactions on which the suit is based have been publicly disclosed through one of the means listed in the statute, anyone with information about fraud—firsthand or otherwise—may pursue a *qui tam* suit.

C. Petitioner's Policy Arguments Do Not Support Its Reading Of Section 3730(e)(4)(A)

Petitioner suggests (Br. 45-49) that a broad reading of Section 3730(e)(4)(A) is needed to prevent unscrupulous relators from obtaining exorbitant recoveries in suits alleging mere technical noncompliance with complicated regulatory requirements. That argument misunderstands important aspects of the FCA, ignores others, and has little to do with how information concerning alleged fraud enters the public domain.

1. The FCA is a fraud statute that imposes liability only on persons who "knowingly" engage in the prohibited conduct. 31 U.S.C. 3729(a) and (b). While the statutory definition of "knowingly" includes acting in "deliberate ignorance" or "reckless disregard of the truth or falsity of the information," 31 U.S.C. 3729(b)(2)-(3), "[n]egligence and innocent mistake are insufficient to meet the intent requirement under the FCA." *United States ex rel. Burlbaw* v. *Orenduff*, 548 F.3d 931, 949 (10th Cir. 2008) (citations omitted).

2. Petitioner (Br. 46-49) and its amici (*e.g.*, Chamber of Commerce, et al., Am. Br. 12-13, 18-25) suggest that their expansive reading of Section 3730(e)(4)(A) is an appropriate means of protecting government contractors from unwarranted *qui tam* suits premised on allegations of technical noncompliance with complex statutory and regulatory schemes. Not all instances of noncompliance with applicable requirements, however, give rise to liability under the FCA. Rather, liability arises only when compliance with a statutory, regulatory, or contractual requirement is material to payment, the defendant knows it has not complied with the requirement, and nevertheless submits, or causes someone else to submit, a claim for payment to which it is not entitled. See, *e.g.*, *United States* v. *Science Applications Int'l Corp.*, 626 F.3d 1257, 1269-1270 (D.C. Cir. 2010); *United States ex rel. Lemmon* v. *Envirocare of Utah, Inc.*, 614 F.3d 1163, 1169 (10th Cir. 2010) ("[F]alse certification—regardless of whether it is implied or express—is actionable under the FCA only if it leads the government to make a payment which, absent the falsity, it

may not have made.").[13] Noncompliance with requirements that are *not* tied to payment, and noncompliance due to confusion over regulatory requirements, do not give rise to FCA liability.

In any event, the manner in which a relator has acquired the information on which his suit is based has no meaningful bearing on the determination whether particular false claims give rise to FCA liability. A variety of screening mechanisms exist to address meritless *qui tam* suits. The general pleading requirements under Rule 8(a)(2) and Rule 11 of the Federal Rules of Civil Procedure, and the heightened specificity required for fraud under Rule 9(b), apply to FCA claims. See, *e.g.*, *United States ex rel. Rost* v. *Pfizer, Inc.*, 507 F.3d 720, 731-733 (1st Cir. 2007) (dismissing claims under Rule 9(b)). The FCA also authorizes awards of attorney's fees to prevailing defendants in *qui tam* suits that are "clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment." 31 U.S.C. 3730(d)(4). With respect to false-certification cases in particular, if compliance with particular requirements is not a condition of payment, or if the defendant acted without the requisite scienter, the defendant can prevail on the merits without relying on Section 3730(e)(4)(A).[14]

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[13] That other statutory or administrative remedial schemes may exist even in these more limited circumstances does not foreclose a plaintiff (whether it be a relator or the United States) from pursuing a claim under the FCA. *See, e.g.*, *United States* v. *Sforza*, 326 F.3d 107, 111-115 (2d Cir. 2003); *United States ex rel. Sutton* v. *Double Day Office Servs., Inc.*, 121 F.3d 531, 533-535 (9th Cir. 1997).

[14] Petitioner argued below that the submission of a knowingly false VETS-100 Report is not actionable under the FCA, but the court of appeals rejected that contention, see Pet. App. 43a-47a, and petitioner did not seek review of that ruling in this Court.

3. By contrast, if a relator uses documents obtained through FOIA to draft a *qui tam* complaint that survives a motion to dismiss on the merits, there is no basis for assuming that the complaint represents a misuse of the *qui tam* mechanism. To be sure, if the underlying documents fall within the categories enumerated in Section 3730(e)(4)(A) (*e.g.*, if the documents constitute "administrative * * * report[s]" within the meaning of that provision), the "public disclosure" bar applies. But if a relator uses FOIA to obtain documents falling outside those categories, and those documents establish an actual FCA violation, allowing a *qui tam* suit to go forward generally furthers rather than subverts the purposes of the FCA.[15]

The jurisdictional rule that petitioner advocates, moreover, could not be limited to suits alleging false certifications of compliance with "technical" requirements. Rather, a rule categorically precluding *qui tam* actions that are based upon information acquired through FOIA would equally apply to *qui tam* suits alleging that a contractor "overcharged the government for substandard goods or services," or "requested payment for goods or services not actually provided." Pet. Br. 10 n.5 (citation omitted). That predictable consequence of adopting petitioner's approach underscores the unsuitability of Section 3730(e)(4)(A) as a tool for

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[15] Whether or not the United States has intervened in a *qui tam* action, it retains authority to seek dismissal of the suit. See p. 3, *supra*. That authority provides a safety valve if the allegations in a particular *qui tam* complaint are legally sufficient to survive a motion to dismiss, but federal officials conclude that continued prosecution of the suit by the relator would have adverse policy consequences (*e.g.*, by disrupting the operations of an important contractor or its relations with the government).

weeding out meritless or counterproductive *qui tam* suits.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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AMICUS CURIAE BRIEF

No. 10-188

In the Supreme Court of the United States

SCHINDLER ELEVATOR CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA, *EX REL.* DANIEL KIRK,
Respondent.

On Writ of Certiorari to the United States Court of Appeals For the Second Circuit

BRIEF *AMICUS CURIAE* OF AARP IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF THE AMICUS CURIAE 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 4

I. ALLOWING *PER SE* EXCLUSION OF A A WHISTLEBLOWER CLAIM UNDER THE FCA BASED ON THE PRESENCE OF A FOIA RESPONSE WOULD CHILL HEALTHCARE TRANSPARENCY INITIATIVES AND DIMINISH THE QUALITY OF CARE PROVIDED TO PATIENTS 4

A. FCA Lawsuits Contribute to More Transparent Operations and Improved Quality of Care 4

B. Increased Transparency is an Essential Part of the Government's Goal of Improving the Quality of Care 10

II. A DOCUMENT DISCLOSED IN RESPONSE TO A FOIA REQUEST ONLY TRIGGERS THE PUBLIC DISCLOSURE BAR IF IT FALLS INTO ONE OF THE FCA'S ENUMERATED CATEGORIES 14

A. The Nature of the Document Controls The Outcome 14

B. Searching for Responsive Records is Not an Administrative "Investigation," Nor is a FOIA Response a "Report." ...16

C. The "Enumerated Categories" are Rendered Meaningless by a Categorical Rule 19

III. A CATEGORICAL RULE WOULD UNDERMINE THE FCA'S REMEDIAL PURPOSES AND LEAD TO ABSURD RESULTS....20

CONCLUSION....25

TABLE OF AUTHORITIES

Cases

Anderson v. United States Dep't of Justice,
518 F.Supp.2d 1 (D.D.C.2007) 17

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No. 89-5414, 1990 WL 123924 (D.C Cir. Aug.
13, 1990).....16

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473 F.3d 312 (D.C. Cir. 2006).....16

Church of Holy Trinity v. United States,
143 U.S. 457 (1892) 24

Cook County v. United States ex rel. Chandler,
538 U.S. 119 (2003) 21

Corley v. United States,
129 S.Ct. 1558 (2009) 20

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571 F.2d 538 (10th Cir. 1978) 17

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456 U.S. 615 (1982) 19

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No. 90-2754 (D.D.C. Oct. 16, 1991).....16

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Madison Mech., Inc. v. Nat'l Aeronautics & Space Admin., 2003 WL 1477014 (D.D.C. Mar. 20, 2003).....17

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The False Claims Act
31 U.S.C. § 3730(e)(4)(A) .....*passim*
31 U.S.C. § 3730(e)(4)(B) 11
31 U.S.C. §§ 3729.....2

The Patient Protection and Affordable Care Act of 2010 ("PPACA"), Pub. L. No. 111-148, 124 Stat. 119 ..... 1, 10

42 U.S.C. § 6101 12
42 U.S.C. §§ 6101-6121 13
42 U.S.C. § 6102 12
42 U.S.C. § 6103 13
42 U.S.C. § 1320a-7(b)(7) 9
42 U.S.C. § 1395i-3(b)(4) 11
42 U.S.C. § 1396r(b)(4) 11
42 U.S.C. § 1396r(h) 11, 12
42 U.S.C. § 10104(j)(2) 1
42 U.S.C. § 18001 *et seq* 1, 10

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S. Rep. No. 99-345 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266 ..... 3, 21

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INTEREST OF THE *AMICUS CURIAE*

AARP is a nonpartisan, nonprofit organization dedicated to addressing the needs and interests of people age fifty and older.[1] Through education, advocacy and service, AARP seeks to enhance the quality of life for all by promoting independence, dignity, and purpose. As the country's largest membership organization, AARP advocates for access to affordable healthcare and for controlling costs without compromising quality.

Amicus will explain the profound ramifications of the Petitioner's argument that *every* document disclosed in response to a Freedom of Information Act ("FOIA") request, regardless of the content or form of the document, is a *per se* trigger of the public disclosure provisions[2] of the False Claims Act ("FCA"), which would categorically prevent federal district courts from exercising

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[1] In accordance with Supreme Court Rule 37.6, *Amicus Curiae* states that (1) no counsel to a party authored this brief, in whole or in part; and (2) no person or entity, other than *amicus*, their members and counsel have made a monetary contribution to the preparation or submission of this brief. Parties were timely informed with 10-days notice of the intent to file this *amicus* brief, and the written consents of the parties to the filing of this brief have been filed with the Clerk of the Court pursuant to Supreme Court Rule 37.3.

[2] The version of the FCA's public disclosure bar at issue in this case has been superseded. The Patient Protection and Affordable Care Act of 2010 ("PPACA"), Pub. L. No 111-148, 124 Stat 119 (2010) (codified at 42 U.S.C. § 18001 *et seq*.) revised the public disclosure provision of the FCA. The public disclosure provision was amended such that, under section 10104(j)(2), a court cannot dismiss a *qui tam* complaint based on a public disclosure if the government opposes the dismissal.

subject matter jurisdiction over all such cases. The excessively broad construction advocated by the Petitioner would foreclose the ability to improve the quality of healthcare operations and the overall quality of care provided to patients, as well as deter noncompliance with healthcare laws by providers, based on the information that can be derived from FCA actions. It would also restrict the ability of whistleblowers to identify and prosecute fraudulent conduct on behalf of the government by blocking meritorious lawsuits initiated under the FCA's *qui tam* provisions. *Amicus* urges the Court to avoid this result by affirming the decision of the United States Court of Appeals for the Second Circuit.

SUMMARY OF ARGUMENT

The government has long recognized that transparency is an essential part of its goal of improving the quality of healthcare in the United States. At its core, the False Claims Act, 31 U.S.C. § 3729 *et seq.*, increases transparency by exposing fraudulent conduct perpetrated by healthcare providers. The information brought to light in FCA cases has resulted in improvements to healthcare operations and the overall quality of care provided to patients, deterred noncompliance with healthcare laws, and incentivized individuals with knowledge of fraudulent conduct to blow the whistle. These results can be attributed to the efforts of *qui tam* relators, which make up more than 80 percent of the cases filed under the FCA.

Petitioner contends that the public disclosure provisions of the FCA are triggered in each and every instance where a document has been disclosed

in response to a FOIA request, thus depriving federal district courts of subject matter jurisdiction in such actions. This position should be rejected for two reasons. First, the construction would eviscerate healthcare transparency laws and foreclose the opportunity to improve the quality of healthcare based on information derived from the FCA. Second, it contradicts the public disclosure provisions of the FCA, which specifically enumerate the types of documents that constitute a public disclosure. 31 U.S.C. § 3730(e)(4)(A). Indeed, the Ninth Circuit has correctly observed that a FOIA response does not trigger the public disclosure provisions of the FCA unless the document disclosed is from one of the sources enumerated by the statute. *United States ex rel. Haight v. Catholic Healthcare West*, 445 F.3d 1147, 1153 (9th Cir. 2006). This interpretation is supported by the plain language of the FCA, the legislative history of the public disclosure provisions, and Congress's intent to "'encourage more private enforcement' of the FCA through expansion of its *qui tam* provisions" and to "correct[] restrictive interpretations of the act's . . . *qui tam* jurisdiction." *United States ex rel. Kirk v. Schindler Elevator Corp.*, 601 F.3d 94, 109 (2d Cir. 2010) (citing S. Rep. No. 99-345, at 23-24 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5266, 5288-89).[3]

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[3] *See also United States ex rel. Findley v. FPC-Boron Employees' Club*, 105 F.3d 675, 684 n.4 (D.C. Cir. 1997) (legislators sought "to prod the government into action" by allowing *qui tam* suits when "evidence or information of fraud was buried somewhere in a government file").

Accordingly, the Court should affirm the decision of the United States Court of Appeals for the Second Circuit.

ARGUMENT

I. ALLOWING *PER SE* EXCLUSION OF A WHISTLEBLOWER CLAIM UNDER THE FCA BASED ON THE PRESENCE OF A FOIA RESPONSE WOULD CHILL HEALTHCARE TRANSPARENCY INITIATIVES AND DIMINISH THE QUALITY OF CARE PROVIDED TO PATIENTS.

A. FCA Lawsuits Contribute to More Transparent Operations and Improved Quality of Care.

The FCA is the single most effective tool in the fight against fraud perpetrated against the government. In the two-year period from January 2009 to January 2011, the United States Department of Justice recovered more than $6.8 billion in actions under the statute. *See* Press Release, Department of Justice, Office of Public Affairs, Department of Justice Recovers $3 Billion in False Claims Cases in Fiscal Year 2010 (Nov. 22, 2010), www.justice.gov/opa/pr/2010/November/10-civ-1335.html. Whistleblowers play a key role in this success. More than 80 percent of FCA cases are filed by relators pursuant to the *qui tam* provisions of the statute. *See* Department of Justice, Civil Division, Fraud Statistics 2 (Nov. 23, 2010), www.justice.gov/civil/frauds/fcastats.pdf. Whether the government declines or seeks to intervene in a case brought by a *qui tam* relator, "the United States

is the real party in interest in any False Claims Act suit." *United States ex rel. Milam v. University of Texas*, 961 F.2d 46, 50 (4th Cir.1992).

The value and remarkable success of the FCA is not limited to the government's financial recovery. FCA cases redress fraud by identifying and preventing substandard healthcare, while imposing continuing compliance obligations on violators to prevent recidivism. The information made available in healthcare cases, combined with other laws designed to increase the transparency of healthcare providers' operations, are a critical component of monitoring the quality of care. At the most basic level, this information educates patients making decisions about their care and those that administer it. This healthcare information should be available to whistleblowers to assist in the identification and deterrence of fraud, particularly where the fraudulent conduct affects the health and safety of patients. Adopting an overly broad interpretation of the public disclosure provisions threatens to undermine transparency laws by penalizing whistleblowers for using the FOIA statute to obtain data that ultimately can positively influence improvements in healthcare operations and the quality of care.

The government has recognized the positive impact that the FCA has on the quality of healthcare. In identifying the goal of ensuring the quality of care provided to beneficiaries of the federal health care programs as one of its top ten management and performance priorities, the Office

of Inspector General ("OIG") of the Department of Health and Human Services ("HHS") stated that:

> The False Claims Act, the Federal Government's primary civil enforcement tool for fraud, has been used successfully to address poor quality of care. These cases often involve allegations of widespread or systemic problems that result in harm to residents of nursing facilities, such as staffing shortages, failure to implement medical orders or services identified on the care plan, failure to ensure that residents are protected from harm, medication errors, and the unnecessary development of facility-acquired medical complications such as infected pressure ulcers.

U.S. Department of Health & Human Services, Office of Inspecter General, 2007 Top Management and Performance Challenges Identified by the OIG, at 11, http://oig.hhs.gov/publications/challenges/files/TM_Challenges07.pdf.

Whistleblowers acting under the FCA's *qui tam* provisions can be credited with exposing fraudulent and substandard healthcare. The effect of the *qui tam* laws in aiding the government in protecting vulnerable patients, such as the elderly in nursing homes and those in an acute care setting, is illustrated by a review of recent FCA settlements. First, last year, in St. Louis, Missouri, five nursing homes operated by Cathedral Rock pled guilty to felony healthcare fraud related to the failure to

provide adequate care to Medicare residents. A press release from the United States Attorney's Office described the unconscionable conduct of the nursing homes and pointed out that FCA cases accomplish more than just recouping money for the government:

> [N]umerous residents suffered from malnutrition, dehydration, preventable pressure sores and preventable side effects from not receiving their medications. Some residents simply wandered away from the homes, sometimes with the Cathedral Rock staff not noticing that the residents were gone until many hours later. One resident was almost hit by a car after leaving a Cathedral Rock facility while using a walker. Other residents underwent amputations of feet and legs because pressure sores formed and were left untreated, and in some cases the pressure sores had become infested with maggots.
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> Gary M. Holst, Special Agent in Charge of the Kansas City Regional Office of Investigations for HHS, noted, "These investigations and their outcomes not only protect the taxpayers from waste, fraud and abuse, but more importantly serve to protect the most vulnerable and precious in our society: the elderly."

Press Release, United States Attorney's Office, Eastern District of Missouri. (Jan. 7, 2010), http://www.integriguard.org/wp-content/uploads/Cathedral-Rock-Nursing-Homes.01.07.10.pdf (emphasis added).

Second, nursing home Grant Park Care Center, located in the District of Columbia, paid $2 million in a *qui tam* case in which its failure to provide quality care to residents resulted in numerous residents suffering from dehydration, malnutrition and increased infections, and other residents being left alone for extended periods of time without cleaning or bathing. Press Release, United States Attorney's Office for the District of Columbia, The United States and the District of Columbia Reach $2 Million Settlement with Grant Park Care Center to Settle Allegations Regarding Fraudulent Billings to Medicare & Medicaid (Nov. 26, 2008), http://www.justice.gov/usao/dc/Press_Releases/2008%20Archives/November/08-323.html.

Third, Omnicare, Inc., the nation's largest nursing home pharmacy company, paid $98 million to resolve *qui tam* claims alleging kickbacks to purchase and recommend Johnson & Johnson drugs, including the anti-psychotic drug Risperdal, for use in nursing homes. Press Release, United States Attorney's Office, District of Massachusetts, Nation's Largest Nursing Home Pharmacy and Pharmaceutical Manufacturer Pay $112 Million to Settle False Claims Act Cases (Nov. 3, 2009), http://www.justice.gov/usao/ma/ Press%20Office%20-%20Press%20Release%20Files/Nov2009/OmnicarePR.html.

The impact of *qui tam* lawsuits on the quality of healthcare is even stronger where the company enters into a corporate integrity agreement ("CIA"). *See* U.S. Department of Health and Human Services, Office of Inspector General, Corporate Integrity Agreements, http://www.oig.hhs.gov/fraud/cias.asp (identifying companies that have previously executed CIA's with OIG). The OIG negotiates compliance obligations with healthcare providers and other entities as part of the civil settlement. Typically, a company agrees to adhere to a CIA in exchange for the OIG's agreement not to seek an exclusion of that healthcare provider or entity from participation in Medicare, Medicaid, and other federal healthcare programs.[4] CIAs include extensive quality improvement measures and reporting obligations.[5] For example, the Buckingham Valley Rehabilitation and Nursing Center and related companies entered into a CIA with the OIG pursuant to which the nursing home was required to implement policies and procedures

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[4] False claims submitted in violation of the False Claims Act give rise to the OIG's permissive exclusion authority under 42 U.S.C.1320a-7(b)(7).

[5] Typically, CIAs require a company to hire a compliance officer/appoint a compliance committee, develop written standards and policies; implement a comprehensive employee training program; retain an independent review organization to review claims submitted to Federal healthcare programs; establish a confidential disclosure program; restrict employment of ineligible persons; report overpayments, reportable events, and ongoing investigations/legal proceedings; and provide an implementation report and annual reports to the OIG on the status of the entity's compliance activities. *See Corporate Integrity Agreements*, http://www.oig.hhs.gov/fraud/cias.asp.

to address virtually all aspects of its business of providing care to the elderly.[6]

B. Increased Transparency Is An Essential Part Of The Government's Goal Of Improving The Quality Of Care.

Under the Patient Protection and Affordable Care Act of 2010 ("PPACA"), Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified at 42 U.S.C. § 18001 *et seq.*) increased accountability is an essential part of the government's goals of improving the quality of care across all settings.[7] PPACA advances various

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[6] *See* Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and Green Valley Pavilion et al., http://oig.hhs.gov/fraud/cia/agreements/buckingham_valley_rehabilitation_and_nursing_center_05012007.pdf. The nursing home was required to implement policies and procedures to address "[m]easures designed to ensure the coordinated interdisciplinary approach to providing care, including . . . resident assessment and care planning; nutrition; diabetes care, wound care; infection control, fall prevention, recovery, and assessment, abuse and neglect policies and reporting procedures; protection from harm procedures; appropriate drug therapies; appropriate mental health services; provision of basic care needs, incontinence care; resident rights and restraint use, activities of daily living (ADL) care; therapy services; quality of life, including accommodation of needs and activities; and assessment of resident competence to make treatment decisions." *Id.* at 6.

[7] PPACA also amended FCA's public disclosure bar by broadening the definition of "original source" and removing the public disclosure provision as a jurisdictional defense by prohibiting a court from dismissing a case for lack of subject matter jurisdiction where the United States opposes the dismissal. 31 U.S.C. § 3730(e)(4)(B). Although the current text

strategies to engender better care through the dissemination of information by healthcare providers. The statute includes numerous provisions that encourage or require collection, aggregation and public reporting of quality metrics, care coordination, improved delivery of services for people with chronic conditions, wellness, prevention, and health promotion, as well as acceleration of adoption of health information technology, such as electronic medical records. Significantly, the information publicly disclosed under PPACA is intended to be actionable and used to improve care and promote greater efficiency in healthcare delivery by routing out waste, fraud, and abusive practices.[8]

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of the public disclosure bar does not expressly apply retroactively to pending cases, PPACA demonstrates Congressional intent disfavoring the dismissal of *qui tam* actions. *See United States ex rel. Longhi v. Lithium Power Tech., Inc.*, 575 F.3d 458, 470 (5th Cir. 2009) (2009 amendments to the False Claims Act are "relevant as to Congress's intent when it enacted the FCA.") (citing *NCNB Texas Nat'l Bank v. Cowden*, 895 F.2d 1488, 1500 (5th Cir. 1990)); *United States v. Montgomery County*, 761 F.2d 998, 1003 (4th Cir. 1985) ("Statutes may be passed purely to make what was intended all along even more unmistakably clear.").

[8] Similarly the Federal Nursing Home Reform Act ("NHRA") directly ties the availability of Medicare and Medicaid payments to the provision of services where a patient or resident can "attain and maintain the highest practicable physical, mental, and psychosocial well-being." *See, e.g.*, 42 U.S.C. § 1396r(b)(4) & 42 U.S.C. § 1395i-3(b)(4) Pursuant to NHRA, a regulated facility can be denied payment for non compliance with applicable care standards. 42 U.S.C 1396r(h)

Among other aspects, PPACA requires nursing homes to disclose detailed information about nursing home ownership, management, leadership, and organizational structure. PPACA § 6101. Nursing homes also must have an effective compliance and ethics program to prevent and detect criminal, civil, and administrative violations. PPACA § 6102. The PPACA provisions requiring nursing home transparency will provide the elderly and their families with more information, provide additional oversight of nursing homes, and help improve the quality of care.[9]

Other PPACA provisions require HHS to publish certain information online on the "Nursing Home Compare" section of the Centers for Medicare & Medicaid Services website, including standardized staffing data, information about staffing turnover, tenure, and pay, and a summary of information regarding substantiated complaints and the number

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[9] PPACA's requirement that nursing homes disclose ownership information is of paramount importance because the complex operating structures of nursing homes contribute to substandard care. In the course of investigating substandard care in nursing homes, the OIG has encountered nursing homes with as many as 17 limited liability companies that play a role in operations of the nursing home. Testimony Before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, U.S. House of Representatives. *In the Hands of Strangers: Are Nursing Home Safeguards Working?*, Testimony of Lewis Morris, Chief Counsel to the Inspector General of the Department of Health and Human Services (May 15, 2008). The complex structures and associated lack of transparency in ownership and management have created challenges for ensuring accountability but the PPACA provisions requiring disclosure simplify law enforcement investigations and improve quality of care.

of criminal violations by the facility and its employees. PPACA § 6103. This data is important because staffing directly impacts the quality of care, and more reliable staffing data is valuable to the elderly and their families.[10]

Taken together, these PPACA provisions reflect a legislative intent to *increase* the quantity of healthcare information publicly available and thereby make providers more accountable for the care delivered. This information should be available to patients and residents to make informed decisions about their care, but also to any party, including whistleblowers acting under the FCA, seeking to expose substandard care that results in harm to patients and fraud on the government. This is in keeping with government regulations that authorize the denial of payments for services that are substandard and fail to complain with applicable standards of care. *See, e.g.*, 42 U.S.C. 1396r(h). Imposing a *per se* bar to subject matter jurisdiction is inconsistent with improving care and undermines the utility of this data in FCA healthcare cases so that there is less accountability and diminished quality.

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[10] PPACA nursing home transparency provisions will also provide consumers with a substantial amount of new information about individual facilities; provide consumer rights information; require that states maintain a website with information on all nursing homes in the state, including survey reports and complaint investigation reports; and provide dementia care and abuse prevention in nurse aide training programs. PPACA §§ 6101-6121.

II. A DOCUMENT DISCLOSED IN RESPONSE TO A FOIA REQUEST ONLY TRIGGERS THE PUBLIC DISCLOSURE BAR IF IT FALLS INTO ONE OF THE FCA'S ENUMERATED CATEGORIES.

A. The Nature of the Document Controls The Outcome.

Congress provided that a document disclosed in response to a FOIA request triggers the FCA's public disclosure provision only if it falls into one of the categories of documents enumerated in 31 U.S.C. § 3730(e)(4)(A). The plain language of the FCA unmistakably supports this interpretation. If Congress intended to categorically deny jurisdiction to federal courts in all cases where an administrative agency responded to a FOIA request—thereby elevating FOIA to the expressly enumerated subjects such as a Congressional report—it would have so specified.

FOIA is a mechanism for obtaining documents in the government's possession. Undoubtedly some documents released by an agency in response to a FOIA request rise to the level of an administrative "report . . . or investigation," congressional reports, or agency audits. *Id.* Others do not. *United States ex rel. Haight v. Catholic Healthcare West*, 445 F.3d 1147, 1153 (9th Cir. 2006). ("[A] response to a FOIA request is not necessarily a report or investigation, although it can be, if it is from one of the sources enumerated in the statute.").

The public disclosure provisions do not mention FOIA. A document disclosed under FOIA is

not a public disclosure unless it falls into one of the categories enumerated in the statute. When considering the issue, the Ninth Circuit correctly observed that the applicability of the jurisdictional bar depends on the nature of the document itself:

> If the document obtained via FOIA request is a public disclosure of a "criminal, civil, or administrative hearing, ... a congressional, administrative, or [General] Accounting Office report, hearing, audit, or investigation, or [is] from the news media," then the jurisdictional bar is applicable. If, as was the case here, the document obtained via FOIA does not *itself* qualify as an enumerated source, its disclosure in response to the FOIA request does not make it so.

Id. at 1156 (italics in original, underline added). The Second Circuit, in the case at hand, agreed with the Ninth Circuit's common-sense approach. The Second Circuit held that the language of the provision compelled the conclusion that "whether a document obtained through a FOIA request is an enumerated source within the meaning of § 3730(e)(4)(A) depends on the nature of the document itself." *U.S. ex rel. Kirk*, 601 F.3d at 107.

B. Searching For Responsive Records Is Not An Administrative "Investigation," Nor Is a FOIA Response A "Report."

Faced with the challenge of characterizing all FOIA responses into one of the three specified categories in the public disclosure provisions, the Petitioner seeks to transform the mere action of an administrative agency in responding to a FOIA request as subsumed by the enumerated categories. Petr.'s Br. 18-19 ("[A]n agency's response to a FOIA request is a 'report' and its search for documents responsive to such a request is an 'investigation.'"). Contrary to the Petitioner's assertion, responding to a FOIA request neither rises to an administrative "investigation," nor is a federal agency required to conduct an "investigation" in response to such a request. The law is clear: an agency's obligation is simply to make "a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Baker & Hostetler, LLP v. U.S. Dep't of Commerce*, 473 F.3d 312, 318 (D.C. Cir. 2006) (citations and internal quotation marks omitted).[11] No investigation is required.[12] As a

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[11] *See also Assassination Archives & Research Ctr. v. CIA*, 720 F. Supp. 217, 219 (D.D.C. 1989), *aff'd*, No. 89-5414, 1990 WL 123924 (D.C. Cir. Aug. 13, 1990) (per curiam) ("FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters"); *Freeman v. Dep't of Justice*, No. 90-2754, slip op. at 3 (D.D.C. Oct. 16, 1991) ("The FOIA does not require that the government go fishing in the ocean for fresh water fish").

[12] Courts repeatedly have held that agencies are not required to respond to questions or requests for explanations. *Zavala v.*

matter of law, it is established that a FOIA response is not commensurate with a government "investigation" as that term is used in the FCA.

The Court also should reject the assertion that the "ordinary use" of the word "investigation" includes an agency's process of searching for documents responsive to a FOIA request. Petr.'s Br. 19-20. According to the Petitioner:

> An inquiry of this nature comes within the ordinary meaning of "investigation." Thus, not surprisingly, searches performed in response to FOIA requests are referred to in ordinary usage as "FOIA investigations." *See, e.g.*, *Madison Mech., Inc. v. Nat'l Aeronautics & Space Admin.*, No. Civ. A. 99-2854 (EGS), 2003 WL 1477014, at * 6 (D.D.C. Mar. 20, 2003); *Malinowski v. F.B.I.*, No. 86 Civ. 2239 (JFK), 1987 WL 12826, at *1 (S.D.N.Y. June 17, 1987).

Petr.'s Br. 20-21 (emphasis added). The authority cited does not represent a common or ordinary

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Drug Enforcement Admin., 667 F.Supp.2d 85, 93 n.2 (D.D.C. 2009); *Anderson v. United States Dep't of Justice*, 518 F.Supp.2d 1, 10 (D.D.C.2007) ("The DEA need not 'create documents or opinions in response to an individual's request for information.'") (internal citations and quotations omitted); *Zemansky v Envtl Prot Agency*, 767 F.2d 569, 573 (9th Cir. 1985) (affirming grant of summary judgment on requester's counterclaim which sought declaration of agency's obligation under FOIA to generate documents explaining its policies and actions); *Di Viaio v. Kelley*, 571 F.2d 538, 542-43 (10th Cir 1978) (questions are not within FOIA's scope)

interpretation of the word "investigation" as the term is used in FOIA jurisprudence. An electronic search of all state and federal cases available in Westlaw reveals that in more than 9,375 cases that involve FOIA requests, the phrase "FOIA investigation" appears just *twice*—in the two unreported cases cited by the Petitioner.[13] Simply stated, a search performed in response to a FOIA request is *not* in the "ordinary use" of the terms referred to as a "FOIA investigation."

Second, conditioning the denial of subject matter jurisdiction on the degree of effort expended by agency staff is unworkable standard for a district court that has no facts before it to determine whether the agency effort was sufficiently substantial or insubstantial to be an "investigation" or a "report."

Put simply, the determination of whether a particular document produced in response to a FOIA request constitutes an administrative investigation or report depends not on how much effort was involved in locating the document, but rather on the nature of the document itself.[14]

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[13] Counsel for AARP conducted a Westlaw electronic search on January 20, 2011, using the database "ALLCASES." Of the 9,375 cases that involved FOIA, only 2 cases—the two cited by Petitioners – use the phrase "FOIA investigation."

[14] Similarly, throughout the process of responding to a FOIA request, *the nature of the documents* is crucial. For example, many documents may be subject to one or more of FOIA's exemptions. This Court has made it clear that the applicability of exemptions to FOIA turns on "the nature of the requested document." *U.S. Dep't of Justice v Reporters Comm. For Freedom of Press*, 489 U.S. 749, 772 (1989) (internal citation

C. The "Enumerated Categories" Are Rendered Meaningless By A Categorical Rule.

Petitioner's interpretation of the public disclosure provision should be rejected because it renders the enumerated categories meaningless. Congress carefully identified the three categories of "public disclosure[s]" that can trigger the FCA's jurisdictional bar: (1) disclosures in "a criminal, civil, or administrative hearing"; (2) disclosures in "a congressional, administrative, or [GAO] report, hearing, audit, or investigation"; and (3) disclosures in "the news media." 31 U.S.C. § 3730(e)(4)(A). Each category evidences a likelihood that the government has actual knowledge or knowledge fairly implied of the fraud. Thus, Congress explicitly barred only those *qui tam* actions based on information that the government has publicly disclosed in the course of investigating, exposing,

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and quotation omitted); *FBI v. Abramson*, 456 U.S. 615, 626 (1982) ("[I]n determining whether information in a requested record should be released, the Act consistently focuses on the nature of the information and the effects of disclosure."). In some instances, a categorical approach is acceptable in determining whether certain types of records are exempt from disclosure *Reporters Committee*, 489 U.S. at 778-79 ("rap sheets" are a type of document that categorically are "law enforcement records" exempt from disclosure under FOIA), *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 241 (1978) (finding that an entire category of documents—such as witness statements—can be found to be exempt from disclosure under FOIA). Other times, a document-by-document assessment is required. *Id* at 229-30.

prosecuting, or otherwise pursuing the allegations of fraud.

To interpret this one-sentence provision so broadly as to also bar all *qui tam* lawsuits based on documents released in response to a FOIA request—regardless of the nature of the documents and irrespective of whether those documents fall into one of the three specified categories—would render Congress's expressly carved-out categories superfluous. Such an interpretation should be rejected. *Corley v. United States*, 129 S. Ct . 1558, 1566 (2009) (One of the "most basic interpretive canons" is that "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous . . . ."); *United States v. Fiorillo,* 186 F.3d 1136, 1153 (9th Cir.1999) ("One provision of a statute should not be interpreted in a manner that renders other sections of the same statute 'inconsistent, meaningless or superfluous.'") (internal citations omitted).

III. A CATEGORICAL RULE WOULD UNDERMINE THE FCA'S REMEDIAL PURPOSES AND LEAD TO ABSURD RESULTS

The Second Circuit held, after carefully considering the statute and its legislative history, that the determination of whether a document obtained in response to a FOIA request is an enumerated source within the meaning of §3730(e)(4)(A) depends on the nature of the document itself. *U.S. ex rel. Kirk*, 601 F.3d at 107. The ruling makes sense because FOIA responses can include innumerable types of documents, some of

which inevitably will fall within the enumerated categories that trigger application of the public disclosure bar, and some of which will not. The plain language of the disclosure provision supports the Second Circuit's decision that only those FOIA documents that fit within the statute's carefully enumerated categories should be deemed to trigger the public disclosure provisions. This achieves the balance Congress has so determinedly worked to achieve "between adequate incentives for whistle-blowing insiders with genuinely valuable information and discouragement of opportunistic plaintiffs who have no significant information to contribute of their own." *Graham County Soil and Water Conservation District v. United States ex rel. Wilson*, 130 S. Ct. 1396, 1406 (2010) (quoting *United States ex rel. Springfield Terminal R. Co. v. Quinn*, 14 F.3d 645, 649 (D.C. Cir.1994)).

Petitioner's proposed categorical rule prohibiting all *qui tam* cases based on any document provided in response to a FOIA request, regardless of the nature of the document, overturns this balance. Congress's goal of "encourag[ing] more private enforcement suits," would be undermined by a categorical rule making it more difficult for relators to discover information to expose fraud against the government. S. Rep. No. 99-345, at 23-24 (1986); *see also Cook County v. United States ex rel. Chandler*, 538 U.S. 119, 133 (2003) (explaining that the 1986 FCA amendments "enhanced the incentives for relators to bring suit"); *Hughes Aircraft Co. v. United States ex rel. Schumer*, 520 U.S. 939, 950 (1997) (1986 amendments "permitt[ed] actions by an expanded universe of plaintiffs").

Therefore, such a rule would reduce the number of *qui tam* lawsuits brought by relators.

Furthermore, such a construction of § 3730(e)(4)(A) would bar not only parasitic lawsuits, but also legitimate *qui tam* cases like Respondent's lawsuit, which likely never would have come to the federal government's attention were it not for his inside information. The remedial purposes of the FCA are not served in a setting where meritorious claims are impeded, leaving fraud against the government unchecked. "[A]n overbroad reading of the jurisdictional bar would prevent an individual with independent but partial knowledge of a possible fraud . . . from bringing a lawsuit that is neither parasitic nor frivolous." *Schindler Elevator*, 601 F.3d at 110.

The Court recently reaffirmed that when interpreting the FCA's disclosure provisions, "the statutory touchstone" is not whether any information whatsoever has been disclosed, but rather "whether the allegations of fraud have been 'publicly disclosed' . . . ." *Graham County*, 130 S. Ct. at 1410 (internal citations omitted) (emphasis added). The Court of Appeals for the D.C. Circuit addressed this issue at length in *Springfield Terminal*. There, the Court found that both the plain language[15] and the purpose and policy of the FCA's public disclosure provision mandate the conclusion that "Congress sought to prohibit *qui tam*

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[15] The plain language of the public disclosure provision makes it clear that it applies to the public disclosure of "allegations or transactions" in one of the enumerated fora. 31 U.S.C. §3730(e)(4)(A).

actions only when either the allegation of fraud or the critical elements of the fraudulent transaction themselves were in the public domain."[16] *Springfield Terminal*, 14 F.3d at 654 (emphasis in original). "Many potentially valuable *qui tam* suits would be aborted prematurely by a reading of the jurisdictional provision that barred suits when the only publicly disclosed information was itself innocuous." *Id.* The claims alleged by Respondent are precisely the kind that the *Springfield Terminal* court was concerned would be prematurely barred by an overly-broad application of the FCA's public disclosure provisions.

Finally, Petitioner and *Amici* sensationalize the Second Circuit's common sense rule and express concern that, absent a categorical denial of subject matter jurisdiction, "vexatious" *qui tam* lawsuits will be filed. Petr.'s Br. 45 ("The Second Circuit's Interpretation of the Public-Disclosure Bar Will Have Far-Reaching and Damaging Consequences.");

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[16] The Second Circuit, in the decision below, also observed that the FCA "indicates that the public disclosure (via an enumerated source) must be of the material elements of the 'allegations or transactions' on which the claim is based." *U.S. ex rel. Kirk*, 601 F.3d at 103 (citing 31 U.S.C. § 3730 (e)(4)(A);*United States ex rel. Fowler v. Caremark RX, L.L.C.*, 496 F.3d 730, 736 (7th Cir. 2007) (stating that "[a] 'public disclosure' exists under §3730(e)(4)(A) when the critical elements exposing the transaction as fraudulent are placed in the public domain" (internal quotation marks omitted)), *overruled on other grounds by Glaser v. Wound Care Consultants*, 570 F.3d 907 (7th Cir. 2009); and *United States ex rel. Grynberg v Praxair, Inc* , 389 F 3d 1038, 1049-51 (10th Cir. 2004) (finding that "allegations or transactions" have been disclosed when "[a]ll of the material elements of the fraudulent transaction were already in the public domain"))

Amici Curiae of the Chamber of Commerce *et al.* Br. 10 ("[T]he proliferation of vexatious or otherwise non-meritorious *qui tam* actions is . . . very real. . . . Unless the Court reverses the Second Circuit's decision, any citizen will be able to use FOIA to scavenge through the government's files looking for material to support a qui tam case."). Their objections rest on mischaracterizations of the court's ruling. The court did *not* hold "that FOIA responses do not trigger the public-disclosure bar . . . ." Petr.'s Br. 46. Nor did the Second Circuit "discard the requirement that relators have firsthand knowledge of misconduct" or find that a *qui tam* case can be based on "FOIA responses alone." *Id.* Instead, the court employed an approach that focused on the nature of the document itself, and not the mere fact that anything has been disclosed under FOIA, as the determinant whether it falls into one of the enumerated categories that triggers the statute. *U.S. ex rel. Kirk*, 601 F.3d at 111. It placed this determination in the sound discretion of federal district court judges who are properly the gatekeeper for whether a FOIA response works a denial of jurisdiction. The judiciary also is empowered to remedy any claims that lack merit or are filed for vexatious reasons under the Federal Rules of Civil Procedure.

It can be no solution to indiscriminately toss out of court every *qui tam* lawsuit in the presence of a FOIA response regardless of the nature and content of the document. Doing so will only dispose of meritorious claims of fraud against the government in contravention of the letter and spirit of the FCA. *Church of Holy Trinity v. United States*, 143 U.S. 457, 459 (1892) (when absurd results follow

from giving broad meaning to words, it is "unreasonable to believe that the legislator intended" that result); *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.").

CONCLUSION

For the foregoing reasons, AARP respectfully submits that the decision of the Court of Appeals for the Second Circuit should be affirmed.

Respectfully submitted,

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SCHINDLER ELEVATOR CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA EX REL. DANIEL KIRK,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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34

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TABLE OF CONTENTS

Page

STATEMENT OF INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 6

ARGUMENT 8

I. STRICT APPLICATION OF THE PUBLIC DISCLOSURE BAR AND ITS ORIGINAL SOURCE EXCEPTION ENSURES THAT ONLY TRUE WHISTLEBLOWERS ARE DEPUTIZED TO LITIGATE IN THE NAME OF THE GOVERNMENT 8

II. THE GOVERNMENT'S INVESTIGATION AND REPORT IN RESPONSE TO A FOIA REQUEST CONSTITUTES A PUBLIC DISCLOSURE 10

III. THE GATEKEEPING FUNCTION SERVED BY THE PUBLIC DISCLOSURE BAR IS PARTICULARLY IMPORTANT IN LIGHT OF "FALSE CERTIFICATION" THEORIES OF FCA LIABILITY BEING ADVANCED BY RELATORS 18

CONCLUSION 26

TABLE OF AUTHORITIES

Page

CASES:

Allison Engine Co. v. *United States ex rel. Sanders*, 553 U.S. 662 (2008) 2, 3

Cheng Fan Kwok v. *Immigration & Naturalization Serv.*, 392 U.S. 206 (1968) 16

Consumer Prod. Safety Comm'n v. *GTE Sylvania, Inc.*, 447 U.S. 102 (1980) 14

Ebeid ex rel. United States v. *Lungwitz*, 616 F.3d 993 (9th Cir. 2010), *cert. denied*, S. Ct. __ (Dec. 6, 2010) 19

Gonzalez v. *Planned Parenthood of Los Angeles*, 2010 WL 3190618 (9th Cir. Aug. 12, 2010) 11

Graham Cnty. Soil & Water Conservation Dist. v. *United States ex rel. Wilson*, __ U.S. __, 130 S. Ct. 1396 (2010) ..... *passim*

Hughes Aircraft Co. v. *United States ex rel. Schumer*, 520 U.S. 939 (1997) 6, 8, 9

In re Nat. Gas Royalties Qui Tam Litig., 566 F.3d 956 (10th Cir. 2009) 6

International Union of Operating Eng'rs, Local 150, AFL-CIO v. *Ward*, 563 F.3d 276 (7th Cir. 2009), *cert. denied*, 130 S. Ct. 442 (2009) 16

Merck & Co. v. *Reynolds*, 130 S. Ct. 1784 (2010) 3

Mikes v. *Straus*, 274 F.3d 687 (2d Cir. 2001) 19

TABLE OF AUTHORITIES—Continued

Page

New Rock Asset Partners, LP v. *Preferred Entity Advancements, Inc.*, 101 F.3d 1492 (3d Cir. 1996) 16

Rockwell Int'l Corp. v. *United States*, 549 U.S. 457 (2007) 2, 3, 10

United States v. *Science Applications Int'l Corp.* __ F.3d. _, 2010 WL 4909467 (D.C. Cir. Dec. 3, 2010) 19

United States Dep't of Justice v. *Reporters Comm. for Freedom of Press*, 489 U.S. 749 (1989) 14

United States ex rel. Branhan v. *Mercy Health Sys. of S.W. Ohio*, 188 F.3d 510, 1999 WL 618018 (6th Cir. 1999) 15

United States ex rel. Chabot v. *MLU Servs., Inc.*, 2010 WL 1539975 (M.D. Fla. Apr. 18, 2010) 21

United States ex rel. Doe v. *John Doe Corp.*, 960 F.2d 318 (2d Cir. 1992) 15

United States ex rel. Grynberg v. *Praxair, Inc.*, 389 F.3d 1038 (10th Cir. 2004) 15

United States ex rel. Hendow v. *Univ. of Phoenix*, 461 F.3d 1166 (9th Cir. 2006) 22

United States ex rel King v. *F.E. Moran, Inc.*, 2002 WL 2003219 (N.D. Ill. Aug. 29, 2002) 13

United States ex rel. Lamers v. *City of Green Bay*, 998 F. Supp. 971 (E.D. Wis. 1998), *aff'd*, 168 F.3d 1013 (7th Cir. 1999) 13

TABLE OF AUTHORITIES—Continued

Page

United States ex rel. Lopez v. *Strayer Educ., Inc.*, 698 F. Supp. 2d 633 (E.D. Va. 2010) 9

United States ex rel. McKenzie v. *BellSouth Telecomm., Inc.*, 123 F.3d 935 (6th Cir. 1997) 24

United States ex rel. Mistick PBT v. *Housing Auth. of Pittsburgh*, 186 F.3d 376 (3d Cir. 1999) 13-14, 15

United States ex rel. Ondis v. *City of Woonsocket*, 587 F.3d 49 (1st Cir. 2009) 12, 15

United States ex rel. Reagan v. *East Texas Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168 (5th Cir. 2004) 12, 14

United States ex rel. Steury v. *Cardinal Health, Inc.*, __ F.3d __, 2010 WL 4276073 (5th Cir. Nov. 1, 2010) 23-24

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United States ex rel. Waris v. *Staff Builders, Inc.*, 1999 WL 788766 (E.D. Pa. Oct. 4, 1999) 13

United States ex rel. Wilson v. *Kellogg Brown & Root, Inc.*, 525 F.3d 370 (4th Cir. 2008) 24

Vermont Agency of Natural Res. v. *United States ex rel. Stevens*, 529 U.S. 765 (2000) 2, 3, 4, 8

Wang v. *FMC Corp.*, 975 F.2d 1412 (9th Cir. 1992) 24

TABLE OF AUTHORITIES—Continued

Page

STATUTES:

5 U.S.C. § 552(a) 14

5 U.S.C. § 552(a)(3)(C) 11

5 U.S.C. § 552(a)(3)(D) 11

15 U.S.C. § 2055(b)(1) 14

29 U.S.C. § 793 20

31 U.S.C. § 1354(a)(1) 22

31 U.S.C. § 3729(a)(1) 4

31 U.S.C. § 3729(b)(1) 4

31 U.S.C. § 3729(b)(2) 4

31 U.S.C. § 3730(b)(1) 4

31 U.S.C. § 3730(d)(1)-(2) 4

31 U.S.C. § 3730(e)(4) 5, 11

31 U.S.C. § 3730(e)(4) (2009) 10-11

31 U.S.C. § 3732(a) 9

38 U.S.C § 4212(b) 23

40 U.S.C. § 3142 20

LEGISLATION:

Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 10104(j)(2) (2010) 11

REGULATIONS:

28 C.F.R. § 85.3(a)(9) (2009) 4

48 C.F.R. § 52.222-38 22

TABLE OF AUTHORITIES—Continued

Page

RULE:

Sup. Ct. R. 37.6 1

OTHER AUTHORITIES:

2010 Pharmaceutical Industry Profile, *available at* http://www.phrma.org/profiles_and_reports 3

CMS Form 855A 21

Department of Justice, Office of Legal Counsel, *Constitutionality of the Qui Tam Provisions of the False Claims Act*, 13 U.S. Op. O. L.C. 207 (1989) 8, 25

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IN THE

Supreme Court of the United States

No. 10-188

SCHINDLER ELEVATOR CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA EX REL. DANIEL KIRK,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF AMICI CURIAE OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN HOSPITAL ASSOCIATION, AND PHARMACEUTICAL RESEARCH & MANUFACTURERS OF AMERICA IN SUPPORT OF PETITIONER

STATEMENT OF INTEREST OF AMICI CURIAE[1]

[1] Pursuant to Supreme Court Rule 37.6, *amici* note that no counsel for a party authored the brief in whole or in part; no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than *amici curiae*, its members, or its counsel, made such a monetary contribution. Petitioner has consented to the filing of this brief through a blanket consent letter filed with the Clerk. Respondent has consented through a consent letter filed with the Clerk.

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. The Chamber represents 300,000 direct members and indirectly represents the interests of more than three million businesses and organizations of every size, in every sector, and from every region of the country. The Chamber actively represents the interests of its members in court on issues of widespread concern to the Nation's business community. The Chamber has filed over 1,700 *amicus curiae* briefs, including many in cases before this Court involving the proper interpretation of the False Claims Act ("FCA"). *See, e.g.*, *Graham Cnty. Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, __ U.S. __, 130 S. Ct. 1396 (2010); *Allison Engine Co.* v. *United States ex rel. Sanders*, 553 U.S. 662 (2008); *Rockwell Int'l Corp.* v. *United States*, 549 U.S. 457 (2007); *Vermont Agency of Natural Res.* v. *United States ex rel. Stevens*, 529 U.S. 765 (2000).

The American Hospital Association ("AHA") is the national advocacy organization for hospitals in this country. It represents approximately 5,000 hospitals, health care systems, and other health care organizations, as well as 37,000 individual members. AHA's mission is to promote high quality health care and health services through leadership and assistance to hospitals in meeting the health care needs of their communities. AHA advocates on behalf of its members in legislative, regulatory, and judicial fora as part of its commitment to improving health care policy and health care delivery for the communities that its members serve. The AHA also has frequently participated as *amicus curiae* in cases with important consequences for its members, including cases arising under the FCA. *See, e.g.*,

Graham Cnty. Soil & Water Conservation Dist., 130 S. Ct. 1396; *Allison Engine Co.*, 553 U.S. 662; *Rockwell Int'l Corp.*, 549 U.S. 457; *Vermont Agency of Natural Res.*, 529 U.S. 765.

The Pharmaceutical Research and Manufacturers of America ("PhRMA") is an association whose membership comprises the country's leading research-based pharmaceutical and biotechnology companies.[2] PhRMA members are responsible for the vast majority of innovative pharmaceutical products approved for marketing in the United States, and are recognized by the federal government as partners in the delivery of life-saving medications to federal health care program beneficiaries. PhRMA members invested an estimated $45.8 billion in 2009 in discovering and developing new medicines that help patients live longer, healthier and more productive lives.[3] PhRMA closely monitors legal issues that impact the pharmaceutical industry and has regularly participated as *amicus curiae* in cases before the Court. *See, e.g.*, *Graham Cnty. Soil & Water Conservation Dist.*, 130 S. Ct. 1396; *Merck & Co.* v. *Reynolds*, 130 S. Ct. 1784 (2010); *Astra USA, Inc.* v. *County of Santa Clara* (No. 09-1273) (merits *amicus* brief submitted Nov. 19, 2010); *Matrixx Initiatives* v. *Siracusano* (No. 09-1156) (merits *amicus* brief submitted Aug. 27, 2010).

The Chamber, AHA, PhRMA, and their respective members have a substantial interest in this case.

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[2] *See* PhRMA Member Company List, *available at* http://www.phrma.org/member_company_list (listing approximately 40 members, affiliates, and research associates)

[3] *See* 2010 Pharmaceutical Industry Profile, *available at* http://www.phrma.org/profiles_and_reports.

The FCA authorizes private citizens who have suffered no individualized injury to bring civil actions in the name of the government "for the person and for the United States Government" alleging that false or fraudulent claims for payment were submitted to the United States or to contractors, grantees, or other recipients using federal funds to advance government programs and interests. 31 U.S.C. § 3730(b)(1); *id.* § 3729(b)(2) (definition of claim). A private citizen litigant, known as a relator, need not prove (or even allege) that a defendant had a specific intent to defraud the government, *id.* § 3729(b)(1), and yet may pursue treble damages and per-false-claim penalties of $5,500-$11,000—damages that this Court has recognized "are essentially punitive in nature." *Vermont Agency of Natural Res.*, 529 U.S. at 784; *see* 31 U.S.C. § 3729(a); 28 C.F.R. § 85.3(a)(9) (2009). Relators and their attorneys have a strong inducement to bring and pursue *qui tam* lawsuits for the lucrative bounties they collect when a suit results in recovery. If the United States intervenes and pursues the action, a relator keeps 15 to 25 percent of any recovery, as well as attorneys' fees and costs; if the United States declines to intervene, a relator keeps up to 30 percent of any recovery, as well as attorneys' fees and costs. 31 U.S.C. § 3730(d)(1)-(2).

Compliance with health care statutes, contracting requirements, and other laws is vitally important, and *amici*'s members dedicate significant resources to internal compliance programs that complement the government's efforts to prevent misconduct. *Amici* support appropriate enforcement of the False Claims Act. At the same time, a balance must be

maintained, as contemplated by Congress, between enforcement and preventing unnecessary litigation that provides no new information to the government.

The FCA's "public disclosure bar" operates as a critical limitation on the reach of the Act's *qui tam* provisions and, in conjunction with the bar's "original source" exception, helps ensure that only genuine whistleblowers are authorized to litigate purported injuries to the United States. 31 U.S.C. § 3730(e)(4). As the Court recognized earlier this year, when Congress incorporated the public disclosure bar and original source exception into the FCA in 1986, it attempted to fashion " 'the golden mean between adequate incentives for whistle-blowing insiders with genuinely valuable information and discouragement of opportunistic plaintiffs who have no significant information to contribute of their own.' " *Graham Cnty. Soil & Water Conservation Dist.*, 130 S. Ct. at 1406 (citation omitted). The Second Circuit's decision upsets that balance. *Qui tam* relators who file suit on behalf of the United States based on information they have obtained from the government's response to a Freedom of Information Act ("FOIA") request are not "whistle-blowing insiders with genuinely valuable information." They are procuring from the government, and then re-presenting to the government, its *own* information—and claiming a bounty for providing that information.

Maintaining a strong public disclosure bar is of vital importance to *amici*, their members, and all of the other companies, contractors, grant recipients, health care providers, universities, and others that receive—directly or indirectly—funds from the

federal government. The convergence of the FCA's relaxed intent standard, its essentially punitive damages, and its fee-shifting provision have combined to produce an expansive cottage industry of bounty-seeking relators. As the Court previously recognized, *qui tam* relators litigate on behalf of the United States with different motivations than federal prosecutors have. *See Hughes Aircraft Co.* v. *United States ex rel. Schumer*, 520 U.S. 939, 949 (1997).

SUMMARY OF ARGUMENT

The question presented concerns whether the government's investigation of its own files, and reporting the results of that government investigation to a FOIA requester, constitutes a "public disclosure" under the FCA so that only a relator who qualifies as an original source of the allegations can litigate on the government's behalf. For decades, the public disclosure bar has served as a fundamental constraint on relators' pursuit of an FCA cause of action and the monetary windfall that may accompany it. The bar ensures that only true whistleblowers, meaning those who come forward with information not otherwise available to the government, can pursue *qui tam* litigation. *See In re Nat. Gas Royalties Qui Tam Litig.*, 566 F.3d 956, 961 (10th Cir. 2009) ("The public disclosure bar is * * * chiefly designed to separate the opportunistic relator from the relator who has genuine, useful information that the government lacks.").

The Second Circuit's decision substantially watered down the public disclosure bar. Rather than interpreting the bar to further the statutory goal of deputizing only true whistleblowers to pursue FCA

actions on behalf of the United States—as most circuits have done—the Second Circuit held that a relator can premise a *qui tam* suit on information publicly disclosed by the government itself in response to a FOIA request. Under that crabbed reading of the statute, someone with no first-hand knowledge of fraud who merely obtains publicly available information from the government's own records can litigate an FCA action on behalf of the United States—and assert the entitlement to tens of millions of dollars for doing so, as occurred here.

If allowed to stand, the Second Circuit's decision will invite a host of parasitic lawsuits against the wide range of entities that directly or indirectly receive funds through federal contracts, federal grants, or federal programs. Federal funding pervades every sector of our economy, ranging from construction and manufacturing to transportation, health care, and scientific research. The specter of FCA lawsuits already looms large for anyone who participates in a federal contract, grant, or program. And if it is not reversed, the Second Circuit's decision will profoundly intensify that concern. Countless (almost literally) administrative requirements would be potentially available for FOIA fishing expeditions by would-be relators seeking to find any sort of non-compliance, however minimal and however ambiguous. In many of those instances, too, federal agencies have established and carefully calibrated administrative mechanisms and remedies for non-compliance. There should be no option for private individuals who lack useful, independent whistleblowing information to use FOIA to transform matters of alleged regulatory non-compliance into FCA actions, overriding administrative agencies'

remedial discretion and subjecting defendants to litigating in the context of the FCA's draconian damages.

ARGUMENT

I. STRICT APPLICATION OF THE PUBLIC DISCLOSURE BAR AND ITS ORIGINAL SOURCE EXCEPTION ENSURES THAT ONLY TRUE WHISTLEBLOWERS ARE DEPUTIZED TO LITIGATE IN THE NAME OF THE GOVERNMENT.

1. *Qui tam* lawsuits have exploded in number in the past two decades. Thirty such lawsuits were filed in 1987; nearly *six hundred* were filed in 2010. *See* United States Dep't of Justice, Civil Division, *Fraud Statistics—Overview, Oct. 1, 1987-Sept. 30, 2010* at 2, *available at* http://www.justice.gov/civil/frauds/fcastats.html. And the United States government is an active participant in comparatively very few of them. Nearly seventy-five percent of the active *qui tam* cases are cases in which the government has declined to intervene after investigating the relator's allegations of wrongdoing. *Id.* at 9. Yet relators regularly press on in these declined actions, motivated by the statute's bounty provision and unconstrained by the institutional wisdom that tempers the zeal of federal prosecutors. *Cf. Hughes Aircraft Co.*, 520 U.S. at 949 ("*Qui tam* relators are * * * less likely than is the Government to forgo an action arguably based on a mere technical noncompliance with reporting requirements that involved no harm to the public fisc."); Department of Justice, Office of Legal Counsel, *Constitutionality of the Qui Tam Provisions of the False Claims Act*, 13 U.S. Op. O.L.C. 207, 220 (1989) ("Relators who have

no interest in the smooth execution of the government's work have a strong dollar stake in alleging fraud whether or not it exists.").

Defending declined *qui tam* lawsuits exposes defendants to immense costs and burdens, even when those cases are ultimately found to lack merit. The vast majority of declined cases fall into that category: Over the past twenty-three years, only *three percent* of the amounts recovered for the United States has come through cases that the government declined to pursue. *See* United States Dep't of Justice, Civil Division, *Fraud Statistics—Overview, Oct. 1, 1987-Sept. 30, 2010*, *supra*, at 2 (calculated by dividing the total recovery in declined *qui tam* cases by the total recovery in all *qui tam* cases). Even after a court rules that a complaint or theory of FCA liability lacks merit, the fee-shifting and bounty provisions encourage relators and their counsel to press on, through appeals in that specific case and through shopping expanded FCA liability theories to similarly situated defendants in other jurisdictions. Because of the FCA's broad venue provision, relators have access to multiple jurisdictions enabling them to file suit in a jurisdiction more likely to be receptive to their arguments. 31 U.S.C. § 3732(a).

2. The potential for lucrative awards has resulted not only in a cottage industry of relators; it has also produced a *de facto* "relator's bar" of attorneys in regular pursuit of *qui tam* plaintiffs. *See, e.g.*, *United States ex rel. Lopez* v. *Strayer Educ., Inc.*, 698 F. Supp. 2d 633 (E.D. Va. 2010) (describing attorney's recruitment of disgruntled former employees to file *qui tam* suits). Allowing FCA actions based on information obtained from the

government through FOIA would be a gift to that bar. *Qui tam* plaintiffs' lawyers would no longer need to limit themselves to trolling for unhappy company employees to serve as whistleblowing relators; they could expand their search to include anyone willing to submit a single FOIA request.

Amici do not dispute that relators with personal knowledge of previously undisclosed information play a legitimate role in helping reveal and deter fraud perpetrated against the government. But the proliferation of vexatious or otherwise non-meritorious *qui tam* actions is also very real. It looms over every company and every organization with any connection to federal funds. And relators (and the burgeoning relators' bar) have every incentive to seek to leverage honest mistakes, alleged violations of ambiguous statutes or regulations, or conflicting agency guidance into lucrative FCA causes of action. Unless the Court reverses the Second Circuit's decision, any citizen will be able to use FOIA to scavenge through the government's files looking for material to support a *qui tam* case. Business, and commerce, will be much the worse for that.

II. THE GOVERNMENT'S INVESTIGATION AND REPORT IN RESPONSE TO A FOIA REQUEST CONSTITUTES A PUBLIC DISCLOSURE.

1. The FCA bars *qui tam* claims based on publicly disclosed information unless the relator is an original source. *Rockwell Int'l Corp.*, 549 U.S. at 467. The statutory bar applies where a relator's suit is based on "reports" or "investigations" that a federal administrative agency publicly discloses. *See* 31

U.S.C. § 3739(e)(4) (2009); 31 U.S.C. § 3730(e)(4) (2010).[4] Even when a public disclosure has occurred, a relator who qualifies as an original source of the FCA allegations can pursue the litigation. *See, e.g.*, *Gonzalez* v. *Planned Parenthood of Los Angeles*, 2010 WL 3190618, at *3 (9th Cir. Aug. 12, 2010). The public disclosure bar and its original source exception thus work in tandem to ensure that only true whistleblowers are deputized to pursue *qui tam* litigation, for their own gain, in the government's name.

2. The *qui tam* suit in this case was based on the government's response to several FOIA requests submitted by Kirk's wife seeking copies of reports known as "VETS-100" reports that Schindler had submitted in various years. Under FOIA, the Department of Labor was required "to search for the records" by "review[ing]" agency records to locate responsive materials. 5 U.S.C. § 552(a)(3)(C), (D). The FOIA requests here "were handled by the Chief of the Investigation and Compliance Division within the [Department of Labor's] Office of Veteran's Employment and Training, who, in his own words, conducted a 'search,' made a 'determination' and produced, on official stationary, a document setting forth the results of his inquiry." Pet. App. 82a.

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[4] The public disclosure bar was amended in the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 § 10104(j)(2) (2010). Instead of "administrative" reports and investigations, it now refers to "federal" reports and investigations. The amendment applies prospectively. *Graham Cnty. Soil & Water Conservation Dist.*, 130 S. Ct. at 1400 n.1. Because a federal agency's action in response to a FOIA request is both "administrative" and "federal," the change in the descriptor has no bearing on the question presented.

Based "in large part" on the Department of Labor's investigation of its records and its public disclosure of materials in response to the FOIA requests, Kirk filed a *qui tam* action alleging that Schindler had violated the FCA in obtaining government contracts in years when the company either had not submitted a report or had submitted an inaccurate one. Pet. App. 2a. Kirk did not allege that Schindler failed to provide any of the goods or services for which Schindler contracted with the United States. But he nonetheless asserted, under what is known as a "false certification" theory, that every single claim Schindler submitted in connection with every one of those government contracts was "false." Kirk therefore sought treble damages on the total amount of the federal contracts—over 300 million dollars—as well as per-claim civil penalties and attorneys' fees and costs. Pet. Br. 10.

3. Kirk is not the first person to think of employing FOIA to obtain information that in turn could be the basis for an FCA claim. Relators have used FOIA to plumb the government's files for records relating to compliance with an assortment of administrative requirements that are not privately enforceable—and then have used the FCA to create private enforcement rights based on those purported instances of administrative noncompliance. *See, e.g.*, *United States ex rel. Ondis* v. *City of Woonsocket*, 587 F.3d 49, 52 (1st Cir. 2009) (relator used FOIA to obtain grant application that formed basis for claim that city made false statements to HUD in connection with city's application for federal funds); *United States ex rel. Reagan* v. *East Texas Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168, 175-176 (5th Cir. 2004) (relator used FOIA to obtain documents

related to a hospital's cost reports and then alleged hospital violated FCA by making false statements in those reports); *United States ex rel King* v. *F.E. Moran, Inc.*, 2002 WL 2003219, at *5 (N.D. Ill. Aug. 29, 2002) (relator used FOIA to obtain information to claim that a subcontractor violated the FCA by falsely representing that it had satisfied minority business enterprise requirements of subcontract); *United States ex rel. Waris* v. *Staff Builders, Inc.*, 1999 WL 788766, at *4 (E.D. Pa. Oct. 4, 1999) (relator used cost report obtained through FOIA to allege that defendant had submitted fraudulent Medicare reimbursement claims); *United States ex rel. Lamers* v. *City of Green Bay*, 998 F. Supp. 971, 980 (E.D. Wis. 1998) (relator used FOIA to obtain grant application and certificate of compliance based on which he alleged that the City of Green Bay falsely represented to the Federal Transit Administration the nature of the city's provision of bus service to local school children), *aff'd*, 168 F.3d 1013 (7th Cir. 1999).

Relators' use of FOIA in FCA actions thus far has been constrained by the holding of a majority of the circuit courts that obtaining documents through FOIA triggers the public disclosure bar. The first circuit to address the issue was the Third Circuit, which held that "the disclosure of information in response to a FOIA request is a 'public disclosure' " based on FOIA's directive that " '[e]ach agency shall make available *to the public*' certain specified categories of information" and FOIA's " 'central purpose' " of "ensur[ing] that government activities are 'opened to the sharp eye of *public* scrutiny.' " *United States ex rel. Mistick PBT* v. *Housing Authority of Pittsburgh*, 186 F.3d 376, 383 (3d Cir.

1999) (quoting 5 U.S.C. § 552(a) and *United States Dep't of Justice* v. *Reporters Comm. for Freedom of Press*, 489 U.S. 749, 774 (1989)) (emphasis in *Mistick*). The Third Circuit also focused on this Court's conclusion in *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 447 U.S. 102 (1980) that the disclosure of information pursuant to FOIA constitutes a "public disclosure" within the meaning of the Consumer Product Safety Act, 15 U.S.C. § 2055(b)(1). 186 F.3d at 383. In that case, the Court held:

> [A]s a matter of common usage the term "public" is properly understood as including persons who are FOIA requesters. A disclosure pursuant to the FOIA would thus seem to be most accurately characterized as a "public disclosure" within the plain meaning of [the Consumer Product Safety Act].

GTE Sylvania, 447 U.S. at 108-109.[5] As the Third Circuit explained, there is "no sound basis for construing the term 'public disclosure' any more narrowly [in the FCA] than the Supreme Court did in *GTE Sylvania*." 186 F.3d at 383.

The First, Fifth, Sixth, and Tenth Circuits have offered a similar analysis. *See United States ex rel. Reagan*, 384 F.3d at 176 (response to a FOIA request is a "report" because it is "official government action" that " 'provides information and notification

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[5] Citing *GTE Sylvania*, the District Court explained that "[f]inding that the DOL's response to the Kirks' requests publicly disclosed the information in question, therefore, is consistent not only with this Circuit's FCA precedent, but also with both the statutory language and the Supreme Court's understanding of the purpose behind the FOIA." Pet. App. 77a.

regarding the results of the agency's search for the requested documents' ") (citation omitted); *United States ex rel. Branhan* v. *Mercy Health Sys. of S.W. Ohio*, 188 F.3d 510, 1999 WL 618018 (6th Cir. Aug. 5, 1999) (information is "publicly disclosed" under the FCA if it is "available to anyone who request[s] it"); *see also United States ex rel. Ondis*, 587 F.3d at 55-56; *United States ex rel. Grynberg* v. *Praxair, Inc.*, 389 F.3d 1038, 1049 (10th Cir. 2004).

The Court should follow the logic and analysis of those courts. The conclusion they reached—that FOIA disclosures are public disclosures—is consistent with the general recognition that the public disclosure bar is designed to preclude *qui tam* suits "based on information that would have been equally available to strangers to the fraud transaction had they chosen to look for it as it was to the relator," like *qui tam* suits based on information obtained through a FOIA request. *United States ex rel. Stinson, Lyons, Gerlin & Bustamante, PA* v. *Prudential Ins. Co.*, 944 F.2d 1149, 1155-56 (3d Cir. 1991); *see also United States ex rel. Doe* v. *John Doe Corp.*, 960 F.2d 318, 321 (2d Cir. 1992) ("The 1986 amendments [to the FCA] attempt to strike a balance between encouraging private citizens to expose fraud and avoiding parasitic actions by opportunists who attempt to capitalize on public information without seriously contributing to the disclosure of the fraud."). Permitting relators to capitalize on public information available through FOIA conflicts with the core purpose of the statute by sanctioning *qui tam* suits based on public information.[6]

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[6] Moreover, the public disclosure bar operates as a jurisdictional limitation for the hundreds of pending cases in

4. The Second Circuit erred in limiting the term "report" in the public disclosure bar to only a "compilation or analysis of information with the aim of synthesizing that information in order *to serve some end of the government*" and the term "investigation" as including only "sustained inquir[ies] *directed toward a government end.*" Pet. App. 24a (emphases added). Nothing in the plain language of the statute or the policy underlying the public disclosure bar supports the "government end" interpretation of the terms "report" or "investigation." The statute does not include a qualification that the report be directed toward some "government end," whatever that is taken to mean. *See Graham Cnty. Soil & Water Conservation Dist.*, 130 S. Ct. at 1405, 1410 (rejecting proposed interpretation of the public disclosure bar that was not supported by the statute's plain language, and explaining that the "public disclosure" is the "touchstone" of the bar).[7]

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which the pre-2010 FCA applies. It is well established that jurisdictional statutes are construed narrowly to permit jurisdiction over only those disputes that Congress intended to proceed in federal court. *See, e.g., Cheng Fan Kwok* v. *Immigration & Naturalization Serv.*, 392 U.S. 206, 212 (1968); *International Union of Operating Eng'rs, Local 150, AFL-CIO* v. *Ward*, 563 F.3d 276, 284 (7th Cir. 2009); *New Rock Asset Partners, LP* v. *Preferred Entity Advancements, Inc.*, 101 F.3d 1492, 1510 (3d Cir. 1996). Narrowly construing the jurisdiction available under the public disclosure bar counsels in favor of reading the terms "report" and "investigation" to encompass public disclosures that occur in response to FOIA requests.

[7] In any event, even under the Second Circuit's "government end" standard, FOIA investigations should qualify. FOIA was, after all, passed to ensure more transparent access to the government's inner workings—which certainly constitutes a government end.

This Court should not adopt a reading of the public disclosure bar that is at odds with the plain meaning of the statutory terms and the policy behind the bar. Here, for example, Kirk did not dispute that the government "conducted a search and prepared a letter detailing that search and its results, a work process that produced a substantive government work product." Pet. App. 83a-84a. This sort of search and the ensuing substantive government work product, provided without restriction to a member of the public, is a publicly disclosed "investigation" and "report." As the District Court correctly recognized, the mere fact that "the investigation and the resulting report may not have been lengthy does not obscure the fact that an administrative body conducted an investigation and produced a report disclosing to members of the public the critical elements of Kirk's claims." Pet. App. 84a.

In rejecting the District Court's interpretation, the Second Circuit relied on an interpretation urged by the United States—that the public disclosure bar should be triggered only if the disclosure "demonstrat[es] that the government is either actively investigating the alleged fraud or there is sufficient public awareness of the allegations to pressure the government to start an investigation." Pet. App. 30a (quoting Brief for *Amicus Curiae* United States of America). This Court rejected a nearly identical argument made by the relator and the United States in *Graham County* and it should do so again here. In that case, the Court had to resolve whether state and local "reports" were "reports" under the public disclosure bar. The relator and the United States argued that state and local reports should not count as public disclosures

because they might not come to the attention of federal prosecutors.

The Court rejected that limitation. It emphasized that the focus of the statutory standard is whether a public disclosure *occurred*, not "whether [the reports] have landed on the desk of a DOJ lawyer." *Graham Cnty. Soil & Water Conservation Dist.*, 130 S. Ct. at 1410. That same focus on the fact of a public disclosure should apply here. It is the public nature of the information provided by the government—and equally available to anyone who asks to see it—that implicates the public disclosure bar, not what the government is doing, intends to do, or has done with that information. If a public disclosure has occurred, only an individual who qualifies as an original source can pursue a *qui tam* suit.

III. THE GATEKEEPING FUNCTION SERVED BY THE PUBLIC DISCLOSURE BAR IS PARTICULARLY IMPORTANT IN LIGHT OF "FALSE CERTIFICATION" THEORIES OF FCA LIABILITY BEING ADVANCED BY RELATORS.

1. The lure of basing a *qui tam* action on information publicly disclosed through FOIA is especially concerning to the *amici* and their members for two related reasons. The first is the rise in *qui tam* suits pursuing so-called "false certification" theories like the one Kirk presented.

"False certification" theories of FCA liability have, thus far, come in two forms—"express" false certification and "implied" false certification. Under these theories, relators do not assert that a claim is "false" because it contains a misstatement or

misrepresentation as to whether the government actually received the exact goods or service in the exact amount or form for which it paid. Instead, these theories seek to render "false" claims that are factually correct on the basis that the submission of the claim somehow erroneously certifies the submitter's compliance with a legal requirement found elsewhere that the relator asserts is relevant to the government's payment of a claim. *See, e.g.*, *Mikes* v. *Straus*, 274 F.3d 687, 699 (2d Cir. 2001); *see also United States* v. *Science Applications Int'l Corp.* __ F.3d. __, 2010 WL 4909467, at *8-*9 (D.C. Cir. Dec. 3, 2010) (holding that the implied certification theory permits FCA liability to be imposed even when the legal requirement on which the FCA action is based was not a precondition for payment).

According to the relators who pursue these theories, a "false certification" even can be "implied" from the mere act of submitting a claim, if the submitter neglected to comply with some other regulatory requirement tethered in some (however distant) way to the claim for payment. *See, e.g.*, *Ebeid ex rel. United States* v. *Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010) ("Implied false certification occurs when an entity has previously undertaken to expressly comply with a law, rule, or regulation, and that obligation is implicated by submitting a claim for payment even though a certification of compliance is not required in the process of submitting the claim"); *see also* Pet. App. 39a-41a, 62a-68a (discussing false certification theories).

Basing a theory of FCA liability on legal technicalities, rather than on falsely seeking payment for goods or services not provided, is a boon

to a relator; it relieves the relator from needing to prove, or indeed even to allege, any actual falsity in the claim for payment submitted in connection with providing the goods or services. And the number of potential legal technicalities for relators to exploit through the combination of FOIA and a false certification theory is enormous. Government contractors, for example, are required to submit certifications related to everything from how they dispose of hazardous materials to their affirmative action plans, and they frequently enter into contracts requiring compliance with other statutory and regulatory provisions. *E.g.*, 40 U.S.C. § 3142 (companies contracting with the government for construction projects must pay their workers according to a wage schedule set by the Department of Labor); 29 U.S.C. § 793 (companies doing business with the government must take "affirmative action" to employ disabled individuals).[8] Providers participating in federal health care programs complete enrollment applications that generally require them to state that they understand that they

[8] The relators' bar is actively soliciting this sort of FCA action. *See, e.g.*, WhistleblowerLaws.com, "Federal Government Contractor Fraud" (suggesting that the FCA "is an enforcement device for contract terms requiring compliance with other federal statutory schemes," such as "environmental protection laws, equal employment opportunity, small business procurements, federal wage laws, and competitive bidding laws * * * despite the absence 'private right to sue,' because Government contracts contain many clauses beyond the technical requirements or descriptions of the products or services being procured" and emphasizing that the FCA is being used by relators to enforce "the Buy American Act, Trade Agreements Act, Anti-Kickback Act, Walsh-Healy and Service Contract Acts, and the Davis-Bacon Act"), *available at* http://whistleblowerlaws.com/index.php?option=com_content&task=view&id=66.

must comply with federal statutes and regulations. *E.g.*, CMS Form 855A Sec. 15(A)(3) ("I agree to abide by the Medicare laws, regulations and program instructions that apply to this provider."). The lower courts already have been struggling to figure out whether to recognize, and how to make sense of, allegations of FCA liability premised on these sorts of "certifications." *See, e.g., United States ex rel. Chabot* v. *MLU Servs., Inc.*, 2010 WL 1539975, at *6 (M.D. Fla. Apr. 18, 2010) (relator alleged that defendant violated FCA by falsely impliedly certifying its eligibility for FEMA installation contract when it submitted a bid and claims for payment but lacked a Florida license; court had to analyze whether being licensed in Florida was a condition of submitting a bid and the extent to which compliance with state licensing laws was a condition of payment under the FEMA contract). Adding suits where the allegations of a false certification stem from the government's FOIA response will exacerbate those problems manyfold.

A second, related concern is that many of the statutes and regulations on which relators base "false certification" FCA cases already have in place carefully calibrated administrative remedies, not subject to private enforcement, to address allegations of non-compliance. Relators have increasingly tried to transform all sorts of alleged regulatory non-compliance into *qui tam* actions with the accompanying potential for a lucrative financial award. Allowing FCA suits to proceed where the government or an administrative agency has designed specific administrative remedies appropriate to redress specific kinds of regulatory non-compliance improperly permits *qui tam*

plaintiffs to rewrite the mechanisms for dealing with noncompliance and to override the discretion vested in executive agencies. *See, e.g., United States ex rel. Hendow* v. *Univ. of Phoenix*, 461 F.3d 1166, 1169 (9th Cir. 2006) (allowing relator's suit based on alleged non-compliance with a condition of participation in student loan program even though Department of Education treated alleged noncompliance of condition as an administrative enforcement matter, not fraud).

2. Both concerns are presented by the claims that Kirk used FOIA to assert. Kirk did not allege, based on some unique and independent inside information, that Schindler had filed claims for servicing the federal government's escalators and elevators that the company in fact had failed to service. Instead, Kirk alleged that Schindler's claims were "false" because: [1] the Vietnam Era Veterans Readjustment Assistance Act ("VEVRAA") states that an agency may not enter certain contracts unless the contractor has submitted a VETS-100 report; [2] a regulation states that an offeror subject to VEVRAA's reporting requirements represents by submitting an offer that "it has submitted its most recent VETS-100 report required" by VEVRAA; and [3] Kirk was a federal contractor. 31 U.S.C. § 1354(a)(1); 48 C.F.R. § 52.222-38; Pet. App. 41a, 58a-59a. Based on the government's report in response to Kirk's FOIA request, Kirk alleged that all of Schindler's claims for payment under contracts to service elevators and escalators were legally "false," because Schindler had not submitted accurate VETS-100 reports in certain years, and thus, the VETS-100 reporting requirement was subject to private enforcement for

treble damages (based on the entire value of all the contracts) under the FCA.

Kirk also used FOIA to try to supplant the administrative remedy Congress enacted for VEVRAA--triggering the second concern described above. VEVRAA contains a specific administrative mechanism for alleging a contractor's noncompliance. *See* 38 U.S.C § 4212(b) (veteran who "believes any [federal] contractor * * * has failed to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor"). Kirk actually availed himself of that administrative remedy, in fact. After Kirk filed an administrative complaint on April 15, 2004, "the DOL's Office of Federal Contract Compliance Programs conducted an investigation" and found "no evidence of non-compliance" by Schindler. Pet. App. 69a.

Kirk was not satisfied with the administrative remedy Congress provided for alleging non-compliance with VEVRAA's reporting requirement. He sought through his *qui* tam action to use FOIA, and the FCA, to circumvent that administrative remedy, override the Department of Labor's investigation, and privately enforce (and privately benefit from) allegations of regulatory noncompliance. This Court should decline to tolerate that end-run around the government's remedial prerogatives.

3. The FCA was never meant to be "a general 'enforcement device' for federal statutes, regulations, and contracts." *United States ex rel. Steury* v. *Cardinal Health, Inc.*, __ F.3d __, 2010 WL 4276073,

at *4 (5th Cir. Nov. 1, 2010). Nor was it meant to allow *qui tam* relators to "shoehorn" what are, in essence, breaches of contract or garden variety administrative matters subject to administrative oversight "into a claim that is cognizable under the False Claims Act." *United States ex rel. Wilson* v. *Kellogg Brown & Root, Inc.*, 525 F.3d 370, 373 (4th Cir. 2008).

There is no question that implied and express "false certification" theories have become the theories *du jour* of the relator's bar. Encouraging *qui tam* actions predicated on FOIA disclosures, in combination with the proliferation of false certification cases that seek to supplement or, in many cases, circumvent administrative discretion will foster abuse of the *qui tam* mechanism. The FCA's objective is to enlist those with knowledge of fraud to help the government ferret it out, not to arm citizens with a heavy statutory weapon to challenge every alleged instance of regulatory noncompliance, however minimal. Where a relator has no knowledge of wrongdoing or fraud, but instead bases a FCA action on publicly available FOIA materials, the relator is simply not the true whistleblower that the FCA is intended to foster and encourage. *See, e.g.*, *Wang* v. *FMC Corp.*, 975 F.2d 1412, 1419 (9th Cir. 1992) ("*Qui tam* suits are meant to encourage insiders privy to a fraud on the government to blow the whistle on the crime."); *United States ex rel. McKenzie* v. *BellSouth Telecomm., Inc.*, 123 F.3d 935, 942 (6th Cir. 1997) (a "true whistleblower" alerts the government to an alleged fraud "before such information is in the public domain").

Upholding the Second Circuit's decision would be harmful to millions of federal contractors, grantees, and program participants. It would encourage citizens with no knowledge of or connection to an industry—not to mention the relators' bar—to rummage through the government's own files and use the threat of the FCA's punitive damages to privately enforce any sort of minor violation that can be alleged, regardless of administrative remedies. By permitting Kirk's *qui tam* suit to proceed after his administrative complaint had been filed, investigated, and resolved against him, Kirk sidestepped the appropriate administrative mechanisms and second-guessed the agency's determination. As the Office of Legal Counsel explained over twenty years ago, the contracting agency should decide whether a deviation constitutes a breach and whether a breach amounts to fraud—taking care "to avoid excessive concern over minor failings that might threaten a useful course of dealing with the other party" and considering whether "the contractor's performance otherwise has been adequate or even excellent." Office of Legal Counsel, *Constitutionality of the Qui Tam Provisions of the False Claims Act*, 13 U.S. Op. O.L.C. at 220.

Relators have no such tempering influences; their strategy is recovery-or-bust. They only reap the financial reward (and attorneys' fees) if they can obtain a judgment or settlement based on allegations of technical noncompliance. There is no basis in law, FCA policy, or logic for using FOIA materials from the government to pursue a FCA action and displace the normal agency compliance and enforcement mechanisms.

CONCLUSION

For the foregoing reasons, and those in Schindler Elevator's brief, the Court should reverse the Second Circuit's judgment.

Respectfully submitted,

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AMICUS CURIAE BRIEF

11

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IN THE

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UNITED STATES OF AMERICA, ex rel. DANIEL KIRK,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF *AMICUS CURIAE* OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF PETITIONER AND IN SUPPORT OF REVERSAL

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF THE *AMICUS CURIAE*	2
STATEMENT OF THE CASE	4
SUMMARY OF ARGUMENT	6
ARGUMENT	7
I. BY BARRING ACTIONS BASED ON INFORMATION OBTAINED THROUGH FOIA REQUESTS, THE FCA PROTECTS FROM PARASITIC LAWSUITS THOSE AMERICAN COMPANIES THAT DO BUSINESS WITH THE GOVERNMENT, ALL OF WHICH ARE REQUIRED TO SUBMIT A PLETHORA OF REPORTS	7
A. Federal Contractors Must Submit Numerous VETS-100 Reports Every Year Under Complex And Confusing Regulations	7
B. Federal Law Obligates Federal Contractors To Submit Many Other Reports As Well	12
C. The FCA's Jurisdictional Bar Properly Protects American Businesses From Opportunistic Lawsuits Based On Required Federal Reports	15
II. A GOVERNMENT AGENCY'S RESPONSE TO A FOIA REQUEST IS A PUBLIC DISCLOSURE OF AN ADMINISTRATIVE INVESTIGATION AND REPORT THAT PRECLUDES AN FCA ACTION	16

TABLE OF CONTENTS—Continued

Page

A. The False Claims Act Bars Suits Based On Public Disclosure Of Information In An Administrative Investigation Or Report 16

B. A Federal Agency's Response To A FOIA Request Constitutes An Investigation And Report Under The FCA's Jurisdictional Bar 17

1. FOIA requires a government agency to conduct an investigation and prepare a report in response to a request 17

2. As the First, Third and Fifth Circuits have held correctly, a government agency's response to a FOIA request is a public disclosure of an administrative investigation and report that precludes an FCA action 20

3. The Second and Ninth Circuits' conclusion that a government agency's response to a FOIA request is "little more than duplication" and does not activate the jurisdictional bar is incorrect and should not be adopted by this Court 23

CONCLUSION 25

TABLE OF AUTHORITIES

FEDERAL CASES — Page

Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102 (1980).... 21
Graham County Soil & Water Conservation District v. United States ex rel. Wilson, 559 U.S. ___, 130 S. Ct. 1396 (2010)..... 17
United States v. Catholic Healthcare West, 445 F.3d 1147 (9th Cir. 2006)..... 23, 24
United States ex rel. Grynberg v. Praxair, Inc., 389 F.3d 1038 (10th Cir. 2004) 23
United States ex rel. Mistick PBT v. Housing Authority, 186 F.3d 376 (3d Cir. 1999)..... *passim*
United States ex rel. Ondis v. City of Woonsocket, 587 F.3d 49 (1st Cir. 2009)..... 7, 22, 23
United States ex rel. Reagan v. East Texas Medical Center Regional Healthcare System, 384 F.3d 168 (5th Cir. 2004)..... 7, 22
Weisberg v. United States Department of Justice, 705 F.2d 1344 (D.C. Cir. 1983) ... 18

FEDERAL STATUTES

Age Discrimination in Employment Act of 1967,
29 U.S.C. §§ 621 *et seq.* 3
Consumer Product Safety Act,
15 U.S.C. §§ 2051 *et seq.* 21
False Claims Act,
31 U.S.C. §§ 3729 *et seq.* ..... *passim*
31 U.S.C. § 3729(a)(1)..... 5
31 U.S.C. § 3730..... 16

TABLE OF AUTHORITIES—Continued

Page

31 U.S.C. § 3730(b) 5
31 U.S.C. § 3730(d)(2) 5
31 U.S.C. § 3730(e)(4) 3, 6, 17
31 U.S.C. § 3730(e)(4)(A) 17
Freedom of Information Act,
5 U.S.C. § 552 ..... *passim*
5 U.S.C. § 552(a)(3)(C) 18
5 U.S.C. § 552(b) 18
5 U.S.C. § 552(c) 18
Service Contract Act,
41 U.S.C. §§ 351 *et seq.* 12
Title I of the Americans with Disabilities Act,
42 U.S.C. §§ 12111-17 3
Title V of the Americans with Disabilities Act,
42 U.S.C. §§ 12201-13 3
Title VII of the Civil Rights Act of 1964,
42 U.S.C. §§ 2000e *et seq.* 3, 13
42 U.S.C. § 2000e-8(c) 14
Vietnam Era Veterans' Readjustment Assistance Act of 1974,
38 U.S.C. §§ 4211 *et seq.* 3, 4, 9
38 U.S.C. § 4212(a)(1) 8
38 U.S.C. § 4212(d) 9

LEGISLATIVE HISTORY

Federal Funding Accountability and Transparency Act of 2006,
Pub. L. No. 109-282, 120 Stat. 1186 (2006) 13

TABLE OF AUTHORITIES—Continued

Page

Government Funding Transparency Act of 2008, Pub. L. No. 110-252, 122 Stat. 2323 (2008) 13

Jobs for Veterans Act, Pub. L. No. 107-288, 116 Stat. 2033 (2002) 8, 9, 10

Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) 17

Veterans Benefits and Health Care Improvement Act, Pub. L. No. 106-419, 114 Stat. 1822 (2000) 9

Veterans Employment Opportunities Act, Pub. L. No. 105-339, 112 Stat. 3182 (1998) 9

FEDERAL REGULATIONS

DHS Chemical Facility Anti-Terrorism Standards, 6 C.F.R. pt. 27 15

FTC Model Forms and Disclosures, 16 C.F.R. pt. 1698 15

26 C.F.R. § 31.6011(a)-1T 14

26 C.F.R. § 31.6011(a)-3 14

26 C.F.R. § 31.6011(a)-4 14

29 C.F.R. § 1904.39 15

41 C.F.R. pt. 61-250 ..... 10, 11

41 C.F.R. § 61-250.1(a) 10

41 C.F.R. § 61.250.11(a) 11

TABLE OF AUTHORITIES—Continued

	Page
41 C.F.R. pt. 61-300	10, 11
48 C.F.R. § 52.222-8(b)(1)	12
48 C.F.R. § 52.222-8(b)(2)(i)	12
48 C.F.R. § 52.222-26(c)(7)	14
48 C.F.R. § 52.222-41(c)(2)(ii)	12
75 Fed. Reg. 39,414 (July 8, 2010)	13

OTHER AUTHORITIES

Equal Employment Opportunity Comm'n, *Job Patterns for Minorities and Women in Private Industry (EEO-1)*	14
Equal Employment Opportunity Comm'n, *Standard Form 100 Instruction Booklet*	14
General Services Administration, Office of Citizen Services and Communications, Federal Citizen Information Center, *Your Right to Federal Records: Questions and Answers on the Freedom of Information Act and the Privacy Act* (Nov. 2009)	18
United States Department of Labor, *Freedom of Information Act Annual Report for Fiscal Year 2009*	20
United States Department of Labor, *The Freedom of Information Act Guide*	19
USAspending.gov	8

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SCHINDLER ELEVATOR CORPORATION,
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v.

UNITED STATES OF AMERICA, ex rel. DANIEL KIRK,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF *AMICUS CURIAE* OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL IN SUPPORT OF PETITIONER AND IN SUPPORT OF REVERSAL

The Equal Employment Advisory Council respectfully submits this brief as *amicus curiae*. The brief urges reversal of the decision below and thus supports the position of Petitioner Schindler Elevator Corporation.[1]

[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, its members or their counsel made a monetary contribution to its preparation or submission.

INTEREST OF THE *AMICUS CURIAE*

The Equal Employment Advisory Council (EEAC) is a nationwide association of employers organized in 1976 to promote sound approaches to the elimination of discriminatory employment practices. Its membership includes over 300 major U.S. corporations. EEAC's directors and officers include many of the nation's leading experts in the field of equal employment opportunity. Their combined experience gives EEAC an unmatched depth of knowledge of the practical, as well as legal, considerations relevant to the proper interpretation and application of fair employment policies and practices. EEAC's members are firmly committed to the principles of nondiscrimination and equal employment opportunity.

In addition, EEAC's members employ many veterans of the country's armed forces including active members of the Guard and Reserve. EEAC's members often go well beyond the letter of the nation's laws promoting and protecting the employment of veterans to support their employees who have served, or are serving, in the armed forces. Many provide supplemental pay to fill the gap between reservists' military pay and their regular salary. Some continue employee benefits during the reservists' absence and/or provide financial and emotional support for reservists' families. And a number have been awarded the Employer Support of the Guard and Reserve's (ESGR) Secretary of Defense "Employer Support Freedom Award," the highest recognition the U.S. government gives to employers for their support of

their employees who serve in the National Guard and Reserve.[2]

All of EEAC's members are employers subject to Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.*, as amended, the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §§ 621 *et seq.*, as amended, Titles I and V of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12111-17, 12201-13, as amended, and other employment-related statutes and regulations. Most also are federal government contractors subject to various federal recordkeeping and reporting requirements, including the obligation under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), 38 U.S.C. §§ 4211 *et seq.*, as amended, and its implementing regulations to file annually with the U.S. Department of Labor "VETS-100" and "VETS-100A" Reports on the number of covered veterans employed by them.

Thus, the issue presented in this case is extremely important to the nationwide constituency that EEAC represents. The district court below properly dismissed this action based in part on the public disclosure bar to jurisdiction under the False Claims Act (FCA), 31 U.S.C. §§ 3729 *et seq.*, which precludes actions based on the "public disclosure" of allegations or transactions in an administrative report or investigation under section 3730(e)(4)(A) of the FCA. Pet. App. 52a. The Court of Appeals, however, vacated the district court's opinion and remanded, holding that the responses provided by the U.S. Department of Labor to requests under the Freedom

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[2] http://esgr.org/site/Programs/FreedomAward/tabid/125/Default.aspx (last visited Dec. 1, 2010).

of Information Act (FOIA), 5 U.S.C. § 552, for VETS-100 Reports filed by Petitioner did not qualify as an "enumerated source" that would trigger the FCA's jurisdictional bar. Pet. App. 33a.

Each year, EEAC's member companies comply with a host of federal government reporting requirements under a variety of complex and sometimes competing regulations. Many of those reports are subject to disclosure under FOIA. Accordingly, EEAC's members are extremely concerned about the ability of private citizens to seek the substantial monetary rewards offered by the FCA based solely on mandatory reports that these individuals obtain upon request from federal agencies under FOIA.

EEAC thus has an interest in, and a familiarity with, the legal and public policy issues presented to the Court in this case. Because of its experience in these matters, EEAC is well-situated to brief this Court on the importance of the issues beyond the immediate concerns of the parties to the case.

STATEMENT OF THE CASE

Petitioner Schindler Elevator Corporation (Schindler) manufactures, installs, and maintains elevators. Pet. App. 49a-50a. Since some of these elevators are in federal buildings, Schindler is a federal government contractor subject to the recordkeeping and reporting requirements of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), 38 U.S.C. §§ 4211 *et seq.*, as amended, including the obligation to annually file VETS-100 Reports listing the number of covered veterans employed by the company during the reporting period. Pet. App. 50a.

Respondent Daniel Kirk worked for Schindler from 1978 until his voluntary resignation in August 2003. Pet. App. 4a. In November 2004, January 2005, and April 2007, Kirk's wife filed requests with the U.S. Department of Labor (DOL) under the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552, for copies of VETS-100 Reports filed by Schindler in various years from 1998 through 2006. Pet. App. 8a. Each time, DOL's Office of the Assistant Secretary for Veterans Employment and Training responded by letter. In response to the various requests, the DOL supplied copies of the company's VETS-100 Reports for 2002, 2004, 2005 and 2006, but responded that it had not located reports for the other years. *Id.* at 8a-9a.

Kirk sued Schindler under the federal False Claims Act (FCA), 31 U.S.C. §§ 3729 *et seq.* Pet. App. 5a. The FCA prohibits the presentation of false claims for payment by the federal government. 31 U.S.C. § 3729(a)(1). It allows an individual, called a "relator," to bring a *qui tam* suit on behalf of the federal government for a violation of the FCA. 31 U.S.C. § 3730(b). If the government declines its option to participate in the suit and the relator's suit succeeds, the relator can be awarded an amount between 25% and 30% of the proceeds, plus expenses, attorney's fees, and costs. 31 U.S.C. § 3730(d)(2).

Kirk contends that Schindler failed to file VETS-100 Reports as required by VEVRAA for the years 1998 through 2001, and 2003, filed false VETS-100 Reports in 2004, 2005, and 2006, and filed a late, and false, VETS-100 Report in 2002. Pet. App. 10a. According to Kirk, Schindler's allegedly non-existent or deficient VETS-100 Reports rendered each request for payment submitted by the company to the federal

government under the company's federal contracts a "false or fraudulent claim" in violation of the FCA. Pet. App. 11a.

The district court dismissed the case, concluding that Kirk's action was barred under the provision in the FCA that deprives courts of jurisdiction over lawsuits based on allegations or transactions that have been publicly disclosed in an administrative report or investigation. Pet. App. 87a. The Second Circuit vacated and remanded, holding that the FCA's jurisdictional bar did not apply to the Department of Labor FOIA responses that formed the basis for Kirk's suit. Pet. App. 47a-48a. Schindler petitioned this Court for a writ of certiorari, which was granted on September 28, 2010.

SUMMARY OF ARGUMENT

The federal False Claims Act (FCA) prohibits fraud against the government by federal contractors. 31 U.S.C. §§ 3729 *et seq.* Although it generally allows a private citizen to bring a lawsuit on behalf of the United States against a contractor for alleged practices that defraud the government, it specifically bars claims that are based on transactions that previously were publicly disclosed in an administrative investigation or report. 31 U.S.C. § 3730(e)(4)(A).

Federal contractors are subject not only to the confusing, sometimes conflicting VETS-100 requirements involved in this lawsuit, but also to a plethora of other federal reporting requirements. Congress enacted the FCA bar on claims based on public disclosures of these reports in order to protect federal contractors from opportunistic, parasitic lawsuits. If this Court excludes from the FCA's bar the response of a federal government agency to a request under

the Freedom of Information Act (FOIA), 5 U.S.C. § 552, American businesses will shoulder the costs of the many exploitative claims that are guaranteed to follow.

A response to a FOIA request falls within the FCA's ban on public disclosures, as several courts of appeals correctly have held. *See United States ex rel. Ondis v. City of Woonsocket*, 587 F.3d 49 (1st Cir. 2009); *United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168 (5th Cir. 2004); *United States ex rel. Mistick PBT v. Housing Auth.*, 186 F.3d 376 (3d Cir. 1999). A federal agency must expend significant effort in order to respond to a request in a way that complies with FOIA, and such a response goes well beyond what the court below described as the "mechanistic production of documents." Pet. App. 24a.

ARGUMENT

I. BY BARRING ACTIONS BASED ON INFORMATION OBTAINED THROUGH FOIA REQUESTS, THE FCA PROTECTS FROM PARASITIC LAWSUITS THOSE AMERICAN COMPANIES THAT DO BUSINESS WITH THE GOVERNMENT, ALL OF WHICH ARE REQUIRED TO SUBMIT A PLETHORA OF REPORTS

A. Federal Contractors Must Submit Numerous VETS-100 Reports Every Year Under Complex And Confusing Regulations

Allowing private individuals to sue under the False Claims Act (FCA), 31 U.S.C. §§ 3729 *et seq.*, for fraud based on purported errors or omissions in the content

of mandatory reports to a government agency that the agency has then publicly disclosed pursuant to a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, would adversely affect the efficiency and economy with which the federal government purchases goods and services from its contractors. In fiscal year 2010, the federal government reported that nearly 60,000 companies had government contracts worth $100,000 or more,[3] the statutory threshold for triggering the VETS-100 reporting requirement.[4] If the decision below were allowed to stand, any of these companies could be the target of an opportunistic FCA *qui tam* suit based solely on an allegation that the information in one of its VETS-100 Reports was incorrect or inadequate. Such an outcome would increase substantially the risk to employers of having to defend many more frivolous lawsuits, and in turn would raise considerably the cost to federal contractors of doing business with the government.

Further complicating matters, Congress has revised the statutory requirements underlying the VETS-100 Report multiple times over the past several years. The U.S. Department of Labor (DOL), which enforces these requirements, in turn has revised its regulations to implement the changes, although those revisions often have not become final until after the effective date of the amendments

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[3] USAspending.gov, http://www.usaspending.gov/explore?&carryfilters=on&tab=By%20Prime%20Awardee&fiscal_year=2010&tab=By+Prime+Awardee&fromfiscal=yes&trendreport=top_cont (last visited Dec. 1, 2010).

[4] The Jobs for Veterans Act of 2002 raised the monetary threshold for government contracts from $25,000 to $100,000 to trigger the VETS-100 filing. 38 U.S.C. § 4212(a)(1).

already has passed. As a result, compliance with the VETS-100 filing requirements has been a moving target for some time.

Federal contractors are required annually to report aggregate workforce demographic data on certain specified categories of covered veterans on a VETS-100 Report. 38 U.S.C. § 4212(d). The statute initially covered two categories of veterans: (1) Veterans of the Vietnam Era; and (2) Special Disabled Veterans. Since 1998, however, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), 38 U.S.C. §§ 4211 *et seq.*, has been amended three times. Each amendment has made changes to the categories of covered veterans for reporting purposes.

In 1998, the Veterans Employment Opportunities Act (VEOA) added "Other Protected Veterans" to the list of covered veterans categories for reporting purposes, and defined this new category as those veterans "'who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.'" Pub. L. No. 105-339, 112 Stat. 3182, 3187 (1998).

In 2000, the Veterans Benefits and Health Care Improvement Act (VBHCIA) added "Recently Separated Veterans" to the list of categories of covered veterans for reporting purposes, and defined this new category to include "any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty." Pub. L. No. 106-419, 114 Stat. 1822, 1855 (2000).

In 2002, the Jobs for Veterans Act (JVA) added "Armed Forces service medal" veterans to the list of categories of covered veterans for reporting purposes,

expanded the definition of "Recently Separated Veterans" to include "any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty," replaced the "Special Disabled Veterans" category with a newly defined "Disabled Veterans" category, and eliminated the category for Vietnam Era Veterans. Pub. L. No. 107-288, 116 Stat. 2033 (2002). The 2002 JVA changes applied only to federal contracts or subcontracts of $100,000 entered into or modified on or after December 1, 2003. 41 C.F.R. § 61-250.1(a).

DOL regulations at 41 C.F.R. pt. 61-250 establish the VETS-100 reporting requirements under VEVRAA for federal contracts entered into prior to the December 1, 2003 effective date of the JVA. Because the JVA did not repeal or replace the VETS-100 reporting requirements that had been in effect prior to its enactment, DOL issued separate regulations, 41 C.F.R. pt. 61-300, and instituted a *new* and separate annual reporting form, the VETS-100A, that reflected the JVA's higher dollar threshold and new covered veteran categories. Thus, federal contractors must apply two sets of partially overlapping regulations in order to comply with VEVRAA's reporting requirements.

As a result of these cumulative changes, federal contractors have been in a constant state of flux for the past several years over how to comply with their VETS-100 and VETS-100A reporting requirements. Just this year, for example, if a company currently was performing on – or at any point in calendar year 2009 completed performance on – any "older" covered contracts of $25,000 or more entered into prior to December 1, 2003 and which were not modified since that date, then the regulations at 41 C.F.R. pt. 61-

250 apply, and the company had an obligation to file VETS-100 Reports this year. If the company currently was performing on – or at any point in calendar year 2009 completed performance on – any "newer" covered contracts of $100,000 or more entered into or modified on or after December 1, 2003, then the regulations at 41 C.F.R. pt. 61-300 apply, and the company had an obligation to file VETS-100A Reports. If the company currently was performing on – or at any point in calendar year 2009 completed performance on – both "older" covered contracts and "newer" covered contracts, then both sets of regulations apply, and the company had an obligation to file both the "older" VETS-100 Report and the "newer" VETS-100A Report this year.

Moreover, a federal contractor's VETS-100 and VETS-100A reporting obligations comprise more than just submitting a single report. Rather, covered employers having multiple establishments – as most large employers do – must file a VETS-100 and/or VETS-100A form for each establishment (or "hiring location") employing 50 or more persons. 41 C.F.R. 61-250.11(a). Establishments with fewer than 50 employees may submit their own separate VETS-100/VETS-100A forms or may be consolidated with other under-50 locations in the same state.[5] *Id.*

Many federal contractors have tens of thousands, or hundreds of thousands, of employees, including numerous veterans in various categories. Given the constant shifting of statutory and regulatory require-

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[5] U.S. Dep't of Labor, VETS-100 Federal Contractor Report on Veterans Employment, http://www.dol.gov/vets/programs/fcp/VETS-100.pdf, and Federal Contractor Veterans Employment Report VETS-100A, http://www.dol.gov/vets/programs/fcp/VETS-100a.pdf (last visited Dec. 1, 2010).

ments, these employers have faced substantial confusion in complying with the VETS-100 requirements over the past several years.

B. Federal Law Obligates Federal Contractors To Submit Many Other Reports As Well

In addition to submitting annual VETS-100 and VETS-100A Reports, federal contractors must comply with many other reporting requirements as a condition of doing business with the government, which, if excluded from the FCA's jurisdictional bar, also potentially would expose them to a flood of costly and time-consuming parasitic litigation. The Federal Acquisition Regulations (FAR) require contractors subject to the Davis-Bacon Act, for example, to submit to the contracting officer, on a weekly basis, copies of their payrolls containing the weekly wages and hours worked by laborers and mechanics. 48 C.F.R. § 52.222-8(b)(1). The payroll records must set out "accurately and completely all of the information required to be maintained," *id.*, and must be accompanied by a "Statement of Compliance" signed by the contractor that certifies that the information "is correct and complete." 48 C.F.R. § 52.222-8(b)(2)(i).

Similarly, the Service Contract Act (SCA), 41 U.S.C. §§ 351 *et seq.*, requires federal government contractors performing service on covered contracts to pay employees no less than the applicable wage rates and fringe benefits for their work. Contractors must submit to the contracting officer a Standard Form 1444, Request for Authorization of Additional Classification and Rate, if they have an unlisted class of employees that is to perform any contract work. 48 C.F.R. § 52.222-41(c)(2)(ii).

Further, under the government's new transparency efforts, a new interim rule, which the issuing federal agencies describe as "sweeping" in its breadth, will require most federal contractors to report to the government key information on all first-tier subcontracts of $25,000 or more, including the names and addresses of all first-tier subcontractors and the dates and amounts of all subcontracts; and, if certain thresholds are met, (1) disclose and report the names and total compensation of each subcontractor's five most highly compensated executives; and (2) disclose and report the names and total compensation of each of their own five most highly compensated executives. Reporting Executive Compensation and First-Tier Subcontract Awards, 75 Fed. Reg. 39,414, 39,416 (July 8, 2010) (to be codified at 48 C.F.R. pts. 4, 12, 42 & 52). The rule expands upon and makes permanent a pilot program tested in 2007 to implement the Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282, 120 Stat. 1186 (2006), as amended by section 6202 of the Government Funding Transparency Act of 2008, Pub. L. No. 110-252, 122 Stat. 2323 (2008), which required the federal government to create a single, easily accessible, searchable and cost-free database that allows the public to see how its tax dollars are being spent on federal awards. *Id.*

In addition, federal contractors also must comply with various federal recordkeeping and reporting requirements that apply to employers generally. Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.*, as amended, requires all employers with 100 or more employees to file annually with the government the "Employer Information Report" (EEO-1), which contains statistical data on the race and ethnicity of the employer's workforce

at each establishment, broken down into various job categories. 42 U.S.C. § 2000e-8(c).[6] Covered employers with multiple establishments must file an EEO-1 form for each establishment employing 50 or more persons, as well as a headquarters report and a consolidated report.[7] In 2008, the government reported that over 68,300 employers, collectively employing more than 62.2 million workers, filed EEO-1 Reports.[8]

All of these, of course, are in addition to the myriad other reports that businesses are required to file with the federal government. The Internal Revenue Service requires that employers prepare and submit, among others, Form 940 (Employer's Annual Federal Unemployment (FUTA) Tax Return), 26 C.F.R. § 31.6011(a)-3, Form 941 (Employer's Quarterly Federal Tax Return), 26 C.F.R. § 31.6011(a)-1T, and Form 945 (Annual Return of Withheld Federal Income Tax), 26 C.F.R. § 31.6011(a)-4, in addition to their own federal tax returns. There are incident-based required reports, such as the Occupational Safety and Health Administration's requirement for a verbal report of the death of any employee from a work-related incident or the in-patient hospitaliza-

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[6] The FAR provides that federal contractors "shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 C.F.R. part 60-1." 48 C.F.R. § 52.222-26(c)(7).

[7] Equal Employment Opportunity Commission, *Standard Form 100 Instruction Booklet*, at 1-2, http://www.eeoc.gov/employers/eeo1survey/upload/instructions_form.pdf (last visited Dec. 1, 2010).

[8] Equal Employment Opportunity Commission, *Job Patterns for Minorities and Women in Private Industry (EEO-1)*, http://www.eeoc.gov/eeoc/statistics/employment/jobpat-eeo1/index.cfm (last visited Dec. 1, 2010).

tion of three or more employees as a result of a work-related incident within eight hours of the occurrence. 29 C.F.R. § 1904.39. And there are countless other specific reporting requirements imposed by agencies with oversight authority over particular industries. *See, e.g.*, DHS Chemical Facility Anti-Terrorism Standards, 6 C.F.R. pt. 27; FTC Model Forms and Disclosures, 16 C.F.R. pt. 1698.

C. The FCA's Jurisdictional Bar Properly Protects American Businesses From Opportunistic Lawsuits Based On Required Federal Reports

Every VETS-100, VETS-100A, EEO-1 or other report that a federal contractor submits to the federal government thus produces a record that potentially is subject to public disclosure pursuant to a FOIA request. Absent the FCA's jurisdictional bar, each one of those documents, once disclosed in a FOIA response, could lead to a *qui tam* lawsuit against a company, thus exponentially increasing the exposure of employers to parasitic lawsuits filed by bounty-hunting plaintiffs seeking to capitalize on publicly disclosed information.

> [I]t must be the case that information obtained pursuant to an [sic] FOIA request has been made public through the administrative process and cannot form the basis of a qui tam action. If that were not the case then . . . public agency records would be flooded with citizens requesting information in order to bring qui tam suits. Congress did not intend the qui tam provision to transform FOIA from sunshine legislation into a search for the pot of gold at the end of the rainbow.

United States ex rel. Mistick PBT v. Housing Auth., 186 F.3d 376, 385 (3d Cir. 1999) (quoting *United*

States ex rel. Herbert v. Nat'l Academy of Sciences, 1992 U.S. Dist. LEXIS 14063, at *16, 1992 WL 247587, at *6 (D.D.C. Sept. 15, 1992)). If this Court excludes responses to FOIA requests from the FCA's jurisdictional bar, American businesses will shoulder the exorbitant costs of the many pot-of-gold searches that are guaranteed to ensue. This Court therefore should reverse the decision below and hold that a government agency's response to a FOIA request is a public disclosure of an administrative investigation and report that precludes an FCA action.

II. A GOVERNMENT AGENCY'S RESPONSE TO A FOIA REQUEST IS A PUBLIC DISCLOSURE OF AN ADMINISTRATIVE INVESTIGATION AND REPORT THAT PRECLUDES AN FCA ACTION

A. The False Claims Act Bars Suits Based On Public Disclosure Of Information In An Administrative Investigation Or Report

The False Claims Act (FCA), 31 U.S.C. §§ 3729 *et seq.*, prohibits fraud against the government by federal contractors. It also allows a private citizen, known as "the relator," to bring a lawsuit on behalf of the United States against a contractor for alleged practices that defraud the government. *Id.* Indeed, Congress amended the FCA in 1986 to expand the ability of private citizens to sue a federal contractor for submitting false claims to the federal government. 31 U.S.C. § 3730.

In so doing, however, Congress was careful not to create a vehicle by which fortune hunters could seize on information already in the public domain to gain a quick cash reward. "[I]n an effort to strike a balance between encouraging private persons to root out

fraud and stifling parasitic lawsuits . . . ," *Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. ___ , 130 S. Ct. 1396, 1407 (2010), Congress specifically excluded from the subject matter jurisdiction of courts "an action or claim under this section" based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation. 31 U.S.C. § 3730(e)(4)(A).[9] Accordingly, federal courts lack jurisdiction under the FCA over cases based on the public disclosure of information contained in a federal agency's administrative report or investigation.

B. A Federal Agency's Response To A FOIA Request Constitutes An Investigation And Report Under The FCA's Jurisdictional Bar

1. FOIA requires a government agency to conduct an investigation and prepare a report in response to a request

Responding to a request under the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552, requires a government agency to expend a significant amount of effort. As the government itself explains, an agency

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[9] As this Court noted in *Graham County*, 130 S. Ct. at 1400 n.1, Section 10104(j)(2) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), signed into law on March 23, 2010, replaced the prior version of 31 U.S.C. § 3730(e)(4) with new language, but is not retroactive. In this brief, we use the present tense in discussing § 3730(e)(4) as it existed at the time this case arose. In any event, the new version still includes the "report . . . or investigation" language which is at issue in this case.

that receives a FOIA request must "find the records, examine them, possibly consult with other agencies or components within the same agency, decide whether to disclose all of the information requested, and prepare the records for release. . . ."[10]

Under FOIA, when an agency receives a request, it must first conduct a search to determine if it has any relevant documents in its possession. *See* 5 U.S.C. § 552(a)(3)(C). The search must be "reasonably calculated to uncover all relevant documents." *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

If and when the agency locates documents that may be responsive to the FOIA request, it still cannot simply provide copies to the requester. Instead, the agency must conduct a thorough analysis of the records to determine if one or more of the nine exemptions (including multiple subparts) set forth in 5 U.S.C. § 552(b) would apply to bar the agency from disclosing the documents. In addition, the agency must review the documents in light of three statutory exclusions that pertain to especially sensitive law enforcement and national security matters. 5 U.S.C. § 552(c). Moreover, even if the agency's analysis leads it to conclude that a particular record is subject to a FOIA exemption, the FOIA requires it to further analyze the record to determine whether there is any portion of it which is "reasonably segregable" so as to allow for its disclosure. 5 U.S.C. § 552(b).

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[10] Gen. Servs. Admin., Ofc. of Citizen Servs. and Communs., Fed. Citizen Info. Ctr., *Your Right to Federal Records: Questions and Answers on the Freedom of Information Act and the Privacy Act* 7 (Nov. 2009), *available at* http://www.pueblo.gsa.gov/cic_text/fed_prog/foia/foia.pdf (last visited Dec. 1, 2010).

In its own FOIA Guide, the Department of Labor describes the labor-intensive investigation that agency officials must conduct to respond to FOIA requests: "Some components of the Labor Department, [sic] receive thousands of requests each year. *Many of these requests require a line-by-line review of hundreds or even thousands of pages of documents.*" U.S. Dep't of Labor, *The Freedom of Information Act Guide*.[11]

As the DOL points out in its FOIA Guide, the agency must analyze the relevant documents carefully to determine whether any of the FOIA exemptions apply. If it concludes that information should not be disclosed, then it must identify the specific exemption that applies.

The agency thus must create a written record to report the relevant exemption(s) to the requester: "There are statutory exemptions that authorize the withholding of information of an appropriately sensitive nature. When the Labor Department withholds information, it ordinarily must specify which exemption of the FOIA permits the withholding." *Id.* Accordingly, DOL's guide says, "[t]he determination letter will advise you of any information that is being withheld pursuant to one or more of the exemptions. When pages are being withheld in their entirety, the component will specify the volume of the materials denied and/or, if feasible, the location of excluded material." *Id.*

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[11] *Available at* http://www.dol.gov/dol/foia/guide6.htm (last visited Dec. 1, 2010) (emphasis added).

In fiscal year 2008, DOL reported processing nearly 17,000 FOIA requests.[12] Of those FOIA requests, the agency granted only 28% in full. DOL denied 32% in full – 11% based on one or more of the statutory exemptions, and 22% based on grounds other than the FOIA exemptions. *Id.* Another 40% were granted in part and denied in part. That the agency granted in full only 28% of the FOIA requests it processed that year shows that merely duplicating documents accounts for, if anything, only a small portion of the FOIA responses conducted by agencies every year. *Id.*

Thus, a government agency's actions in response to a FOIA request necessarily extend well beyond a routine, rubber-stamp operation. Rather, the agency must conduct an investigation by reviewing documents in its possession, locating those that may be responsive to the request, identifying among those the ones that indeed are responsive, and analyzing them to determine which if any exemptions apply, and if so, to what degree. Then, and only then, the agency responds with a report to the requester.

2. As the First, Third and Fifth Circuits have held correctly, a government agency's response to a FOIA request is a public disclosure of an administrative investigation and report that precludes an FCA action

The First, Third and Fifth Circuits all have addressed the issue before this Court and concluded that a government agency's response to a FOIA

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[12] U.S. Dep't of Labor, *Freedom of Information Act Annual Report for Fiscal Year 2009*, http://www.dol.gov/sol/foia/2010anrpt.htm (last visited Dec. 1, 2010).

request constitutes a public disclosure of an administrative investigation and report that triggers the FCA's jurisdictional bar. The Third Circuit so held in *United States ex rel. Mistick PBT v. Housing Auth.*, 186 F.3d 376 (3d Cir. 1999), in an opinion written by then Judge Alito. As in this case, the FCA claims in *Mistick* stemmed directly from information the relator received from a federal agency in response to its FOIA request. *Id.*

The Third Circuit pointed first to the plain text of the FOIA, which provides that "'each agency shall make available *to the public*' certain specified categories of information." *Id.* at 383 (citation omitted). Relying on this Court's decision in *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102 (1980), which held that the disclosure of information in response to a FOIA request constituted a public disclosure under the Consumer Product Safety Act, 15 U.S.C. §§ 2051 *et seq.*, the Third Circuit concluded that documents released in response to the FOIA request were the product of an administrative investigation that triggered the public disclosure bar under the FCA. *Id.*

The Third Circuit next determined that a FOIA response constitutes a "report" and "investigation" for the purpose of invoking the FCA's jurisdictional bar. Noting the dictionary definition of the word "report," the Third Circuit concluded that "[a] response to a FOIA request falls within these definitions. Such a response provides information and notification regarding the results of the agency's search for the requested documents and constitutes an official and formal statement concerning those results." *Id.* at 383-84.

In so doing, the Third Circuit took notice of the obligations that FOIA places on an agency that receives a request, and the actions that agency must perform in response. It observed:

> HUD's search for the documents sought under the FOIA and its decision to disclose them clearly satisfied our court's interpretation of the term 'administrative,' and we believe that these processes should be viewed as constituting an 'investigation' within the meaning of 31 U.S.C. § 3730(e)(4)(A). Accepted definitions of the term 'investigation' include 'a detailed examination,' . . . and the 'making of a search.' . . . When an agency receives a FOIA request, it is obligated to conduct a search that is reasonably calculated to uncover all relevant documents. . . . Such a search falls within the common understanding of the term 'investigation.'

186 F.3d at 384 (citations and footnotes omitted).

It thus ruled that a response to a FOIA request is a "public disclosure" that triggers the jurisdictional bar under 31 U.S.C. § 3730(e)(4)(A). *Id.* at 389.

The First and Fifth Circuits agree with the Third Circuit's rationale in *Mistick*. *United States ex rel. Reagan v. E. Tex. Med. Ctr. Reg'l Healthcare Sys.*, 384 F.3d 168, 176 (5th Cir. 2004) ("the response to [the relator's] FOIA request is an administrative report constituting a public disclosure under § 3730(e)(4)(A)") (footnote omitted); *United States ex rel. Ondis v. City of Woonsocket*, 587 F.3d 49, 55 (1st Cir. 2009) ("a response to a FOIA request is an act of public disclosure because the response disseminates (and, thus, discloses) information to members of the public (and, thus, outside the government's

bailiwick)"). In *City of Woonsocket*, the First Circuit concluded that "a FOIA response is a report, at least in the sense that it constitutes an official statement concerning the results of the agency's search of its files." *Id.* at 56. Like the Third Circuit in *Mistick*, it examined the dictionary definition of "report" and concluded that "[t]he result of an agency's search of its files in response to a FOIA request fits comfortably within this broad definition." *Id.* Acknowledging the work involved in an agency's response to a FOIA request, the First Circuit found that "[j]ust as transmittal of the FOIA response to the relator constitutes an act of public disclosure, the end product of the government's search (locating and compiling the requested documents) independently constitutes an administrative report – and this is so regardless of the character of the underlying documents."[13] *Id.*

3. The Second and Ninth Circuits' conclusions that a government agency's response to a FOIA request is "little more than duplication" and does not activate the jurisdictional bar is incorrect and should not be adopted by this Court

The court below concluded that a federal administrative agency's response to a FOIA request is not always a public disclosure that triggers the FCA's jurisdictional bar. Pet. App. 47a-48a. Relying largely on the Ninth Circuit's decision in *United States v. Catholic Healthcare West*, 445 F.3d 1147 (9th Cir.

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[13] The Tenth Circuit also has stated that "[i]t is generally accepted that a response to a request under the FOIA is a public disclosure." *United States ex rel. Grynberg v. Praxair, Inc.*, 389 F.3d 1038, 1051 (10th Cir. 2004) (citations omitted).

2006) ruled that "whether a document obtained through a FOIA request is an enumerated source within the meaning of § 3730(e)(4)(A) depends on the nature of the document itself." Pet. App. 23a.

Disagreeing specifically with *Mistick*, the court below read into the language of the jurisdictional bar a number of restrictions leading to a much narrower interpretation, stating that a "report," in this context, "connotes the compilation or analysis of information with the aim of synthesizing that information in order to serve some end of the government, as in a 'hearing' or 'audit.'" Pet. App. 24a. Contrary to the Third Circuit's recognition of the extensive effort an agency must put forth in responding to a FOIA request, the Second Circuit dismissed those labors as a "mechanistic production of documents," *id.*, as did the Ninth Circuit in *Catholic Healthcare*, 445 F.3d at 1153 (quoting *Mistick*, 186 F.3d at 393) (Becker, C.J., dissenting). *See also Catholic Healthcare* at 1153 (describing a response to a FOIA request as "little more than duplication").

The Second and Ninth Circuits have underrated significantly, and erroneously, the extent of the investigation that FOIA demands each agency perform in response to a request as well as the nature of the report that is issued. EEAC respectfully submits that the decision below should be reversed.

CONCLUSION

For the foregoing reasons, *amicus curiae* Equal Employment Advisory Council respectfully submits that the decision below should be reversed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

No. 10-188

IN THE

Supreme Court of the United States

SCHINDLER ELEVATOR CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA
ex rel. DANIEL KIRK,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF AMICUS CURIAE 1

BACKGROUND 2

SUMMARY OF ARGUMENT 4

ARGUMENT 5

I. An Agency's Release of Records in Response to a FOIA Request Is Not Itself an Administrative "Report" or "Investigation" 7

II. Schindler's Construction of Administrative "Report" and "Investigation" Is in Tension With the Purposes of FOIA 14

CONCLUSION 16

TABLE OF AUTHORITIES

Page(s)

Cases

Allison Engine Co., Inc. v. United States ex rel. Sanders, 553 U.S. 662 (2008) 14

Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102 (1980) 13

Department of the Air Force v. Rose, 425 U.S. 352 (1976) 6

Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136 (1980) 8, 11

Landmark Legal Foundation v. Environmental Protection Agency, 272 F. Supp. 2d 59 (D.D.C. 2003) 11

Maydak v. United States Department of Justice, 218 F.3d 760 (D.C. Cir. 2000) 14

National Labor Relations Board v. Robbins Tire & Rubber Co., 437 U.S. 214 (1978) 14

National Labor Relations Board v. Sears, Roebuck & Co., 421 U.S. 132 (1975) 9

Rainwater v. United States, 356 U.S. 590 (1958) 15

United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989) 6, 7

United States Department of State v. Ray, 502 U.S. 164 (1991) 5

Statutes

False Claims Act

31 U.S.C. § 3729 *et seq.* 2
31 U.S.C. § 3730(e)(4)(A) 2, 3, 14

Freedom of Information Act

5 U.S.C. § 552(a)(1) 6
5 U.S.C. § 552(a)(2) 6
5 U.S.C. § 552(a)(2)(D) 10
5 U.S.C. § 552(a)(3) 4
5 U.S.C. § 552(a)(3)(A) 6
5 U.S.C. § 552(a)(3)(C) 11
5 U.S.C. § 552(a)(3)(D) 4, 6, 11
5 U.S.C. § 552(a)(4)(A)(ii)(I) 12
5 U.S.C. § 552(a)(6)(E)(iv) 10
5 U.S.C. § 552(b) 6
5 U.S.C. § 552(e)(1) 10

Other

145 Cong. Rec. 16032 (July 14, 1999) 15

Black's Law Dictionary (5th ed. 1979) 7

United States Department of Justice, Guide to the Freedom of Information Act (2009 Edition), http://www.justice.gov/oip/foia_guide09.htm 12

United States Department of Labor, The Freedom of Information Act Guide, http://www.dol.gov/dol/foia/guide6.htm 9, 13

INTEREST OF AMICUS CURIAE[1]

Public Citizen, a national consumer-advocacy organization founded in 1971, appears on behalf of its approximately 225,000 members and supporters before Congress, administrative agencies, and courts on a wide range of issues, including governmental transparency and corporate accountability. Since its inception, Public Citizen has promoted accountability in government by requesting agency records under the Freedom of Information Act (FOIA) and using records obtained through FOIA to provide the public with information on the inner workings of government. In addition, Public Citizen has provided legal assistance to many public interest organizations, academics, journalists, and others seeking access to information under FOIA and other open-government laws. Public Citizen attorneys have represented parties in scores of FOIA cases in the lower federal courts and have represented parties or filed amicus briefs on FOIA issues in cases before this Court, including *FCC v. AT&T*, No. 09-1279, *cert. granted*, 131 S. Ct. 61 (2010); *Milner v. Department of the Navy*, No. 09-1163, *cert. granted*, 130 S. Ct. 3505 (2010); *Taylor v. Sturgell*, 553 U.S. 880 (2008); *U.S. Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989); *U.S. Department of Justice v. Julian*, 486 U.S. 1 (1988); and *CIA v. Sims*, 471 U.S. 159 (1985).

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[1] This brief was not authored in whole or in part by counsel for a party. No person or entity other than amicus curiae or its counsel made a monetary contribution to preparation or submission of this brief. Both petitioner and respondent have filed blanket consents to the filing of amicus curiae briefs in support of either party; those consents are reflected on the Court's docket.

Because it regularly requests records and litigates cases under FOIA, Public Citizen has significant experience in how FOIA works in practice. Drawing on its experience, Public Citizen files this amicus brief to explain the process of accessing records under FOIA and to show that, in light of this process, not all records released by the government in response to a FOIA request are "administrative reports" or the products of an "administrative investigation."

BACKGROUND

Daniel Kirk brought this *qui tam* action on behalf of the United States under the False Claims Act (FCA), 31 U.S.C. § 3729 *et seq.*, alleging that his former employer, Schindler Elevator Corp., entered into government contracts while in violation of the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA). Specifically, Kirk alleged that, for a number of years, Schindler failed to file documents known as VETS-100 reports, as required by the VEVRAA, or filed false reports, resulting in what Kirk charged were false claims for payment within the terms of the FCA.

Kirk based his allegations in part on his comparison of the information contained in Schindler's VETS-100 reports, which Kirk's wife had obtained from the Department of Labor (DOL) through a series of FOIA requests, with his personal knowledge of Schindler's operations from his time with the company.

The district court dismissed the case, holding in relevant part that the FCA's public disclosure bar, *id.* § 3730(e)(4)(A), barred claims based on documents released by an agency in response to a FOIA request. At that time, the public disclosure bar stripped courts of jurisdiction over FCA claims that were "based upon

the public disclosure of allegations or transactions . . . in a congressional, administrative, or Governmental Accounting Office report, hearing, audit, or investigation . . . unless the action is brought by the Attorney General or the person bringing the action is an original source of the information." *Id.* The district court held that a release of documents under FOIA—even where, as here, the documents are not themselves "administrative reports" or the products of "administrative investigations"—"entail[s] an 'investigation' and produce[s] a 'report' as those words are commonly used and defined." Pet. App. 82a.

The Second Circuit reversed. Explaining that the word "report" as used in § 3730(e)(4)(A) "most readily bears a narrower meaning than simply 'something that gives information,'" the court held that the word does not cover all records released in response to a FOIA request because the word "connotes the compilation or analysis of information with the aim of synthesizing that information in order to serve some end of the government." Pet. App. 24a. These characteristics, the court reasoned, are notably missing from an agency's release of records in response to a FOIA request, which—because "FOIA is simply a mechanism for granting the public access to information in the possession of an agency," *id.* at 26a—involves little more than the "mechanistic production of documents." *Id.* at 24a.

The court further held that the word "investigation" bears a narrower meaning "than simply a 'detailed examination' or 'search.' Instead, an 'investigation' here implies a more focused and sustained inquiry directed toward a government end." *Id.* (citation omitted). Using this definition, the court held that the

word "investigation" does not describe an agency's release of records in response to a FOIA request, because, in the FOIA context, an agency is not "uncovering possible noncompliance or assembling information relevant to a problem of particular concern to the government," *id.*, but is only "review[ing], manually or by automated means, [its] records for the purpose of locating those records which are responsive to a request," 5 U.S.C. § 552(a)(3)(D). As a result, the court concluded, "whether a document obtained through a FOIA request is an enumerated source within the meaning of [the FCA's public disclosure bar] depends on the nature of the document itself," not on how it was disclosed. Pet. App. 23a.

SUMMARY OF ARGUMENT

This case presents the question whether an agency's release of records under FOIA changes the nature of the records, such that a non-report becomes a report, or a non-investigation becomes an investigation, merely by being disclosed by the government. The Second Circuit correctly answered this question in the negative, and its judgment should be affirmed.

FOIA requires government agencies to disclose agency records to the public, including in response to requests for records. 5 U.S.C. § 552(a)(3). On request, an agency must release all non-exempt responsive records and provide a basis for withholding exempt records. But FOIA does not require agencies, when releasing records to a requester, to make any statement regarding the content of the released records, such as whether the records reflect agency policy or whether they are authentic or accurate, and agencies do not do so.

Accordingly, documents released in response to a FOIA request do not "bear[] the imprimatur of the government," Petr.'s Br. at 14—and thus do not become "administrative reports," even under Schindler's definition, *see also id.* (defining "[administrative] report" as "an official notification of findings or conclusions by the government")—upon being released. This is particularly true where, as here, the records were originally generated not by the agency releasing them but by a private party. Likewise, an agency's response to a FOIA request is not an "administrative investigation." Although Schindler (at 14, 20) equates "investigation" with "search," and agencies "search" their files in response to a FOIA request, not every "search" is an "investigation." And reviewing responsive records before releasing them does not turn released records into the products of an "investigation."

In light of the manner in which FOIA operates, this Court should hold that, for purposes of the FCA, documents disclosed by the government in response to a FOIA request are to be treated the same as documents disclosed by the government in some other manner: whether a document is an "administrative report" or the product of an "administrative investigation" under the FCA depends not on whether or how the document was disclosed but on what type of document it is. In other words, "[i]f . . . the document obtained via FOIA does not *itself* qualify as an enumerated source [e.g., an administrative report or investigation], its disclosure in response to the FOIA request does not make it so." Pet. App. at 22a-23a.

ARGUMENT

FOIA was enacted in 1966 "to facilitate public access to Government documents." *U.S. Dep't of State v.*

Ray, 502 U.S. 164, 173 (1991). Its basic purpose is "to open agency action to the light of public scrutiny," *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citation omitted), so that citizens can know "what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

To this end, FOIA provides that any person has a right to obtain access to any agency record, subject to certain exemptions. *See* 5 U.S.C. § 552(b). A person can exercise this right by submitting a request for "reasonably describe[d]" records to the federal agency that possesses or controls the records. *Id.* § 552(a)(3)(A). Upon receiving such a request, the agency must "make the records promptly available" by releasing them to the requester. *Id.*[2]

In response to a FOIA request, the agency must first "review, manually or by automated means, [its] records for the purpose of locating those records which are responsive to a request." *Id.* § 552(a)(3)(D). After the agency has conducted an adequate search and retrieved all responsive records, the agency must disclose the records to the requester, *id.* § 552(a)(3)(A), unless the records fall within one of nine exemptions. *Id.* § 552(b). If an exemption applies,

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[2] FOIA also provides for agency records to be disclosed to the public in two other ways, neither of which involves an agency response or is at issue here. First, FOIA requires agencies to publish certain information in the Federal Register. *See* 5 U.S.C. § 552(a)(1). Second, FOIA requires agencies to make some types of documents available to the public in a physical or online reading room, *id.* § 552(a)(2), including documents previously disclosed in response to a FOIA request that the agency thinks are likely to be requested again.

the agency may redact the exempted material from the document before disclosing it to the requester or, if the exemption covers the entire document, withhold the document altogether.

Schindler contends that this process of releasing records automatically produces an "administrative report" and constitutes an "administrative investigation." It does not. Releasing records under FOIA does not transform the records into something new.

I. An Agency's Release of Records in Response to a FOIA Request Is Not Itself an Administrative "Report" or "Investigation."

FOIA is a disclosure statute whose "sole concern is with what must be made public or not made public." *Reporters Comm. for Freedom of the Press*, 489 U.S. at 772 (citation omitted). Because FOIA focuses only on disclosure—and not on adding to or changing the nature of the records disclosed—records released in response to a FOIA request do not constitute administrative "reports" or "investigations" if they were not so prior to being released.

A. To begin with, an agency's release of records in response to a FOIA request does not come within the ordinary meaning of the term "administrative report." However one defines the word "report"—short of the hopelessly vague "something that gives information," Petr.'s Br. at 19, a definition so broad that it would render the words "hearing," "audit," and "investigation" in the FCA's public disclosure bar surplusage—the definition must include, at a minimum, the requirement that the drafter of the document stands behind its content. *See, e.g.*, *Black's Law Dictionary* 1169 (5th ed. 1979) (defining "report" as "[a]n

official or formal statement of facts of proceedings"). Indeed, even Schindler appears to acknowledge this necessary (although perhaps not sufficient) condition when it suggests that a record cannot be an "administrative report" unless it "bears the government's imprimatur." Petr.'s Br. at 14; *see also id.* (defining "[administrative] report" as "an official notification of findings or conclusions by the government"). But a proper understanding of FOIA shows that records released in response to a FOIA request do not bear the government's imprimatur, and thus do not become "administrative reports," even under Schindler's definition, simply by being released by the government.[3]

FOIA imposes on agencies a vital but limited obligation to release agency records—including records submitted to the agency by private parties—to any person who requests them, except to the extent that an exemption applies. In response to a request, an agency need only release responsive, non-exempt records and provide a basis for withholding exempt records. It need not—and agencies do not—do anything more. *See Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980) ("The Act does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained.").

Thus, FOIA does not "require agencies to do research for [requesters], to analyze data, to answer

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[3] Schindler makes much of the fact that DOL provided a cover letter along with the released records. *See, e.g.*, Petr.'s Br. at 32-33. But it never explains how this fact has any bearing on whether the released records are administrative "reports" or "investigations" under the FCA's public disclosure bar.

questions, or to create records in order to respond to a request." U.S. Dep't of Labor, The Freedom of Information Act Guide (DOL Guide), http://www.dol.gov/dol/foia/guide6.htm. It does not require agencies to organize the records they release or to explain the content of the released records—even if doing so would make the records more understandable in light of redactions and withholdings. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161 (1975) (holding that FOIA does not require agencies "to produce or create explanatory material"). It does not require agencies to comment on whether the released records reflect agency policy or to confirm or deny the records' authenticity or accuracy. In fact, FOIA neither requires agencies to make, encourages agencies to make, nor reflects any expectation that agencies will make *any statement whatsoever* regarding the substance of the released records.

To be sure, many requesters might prefer that agencies provide additional information that might aid the requester in interpreting the records, particularly given that many records, like the records at issue here, contain unsynthesized information. But FOIA simply does not work that way. Under FOIA, the requester is left with the task of deciphering what the released records mean and analyzing their contents.

Thus, when an agency releases records in response to a FOIA request, it does not endorse or approve (or give its "imprimatur" to) the information contained within the released records. Indeed, many records released under FOIA, including those at issue here, were not created by the government but instead were submitted to the government by a third party. These records surely are not transformed into "administra-

tive reports" solely because an agency fulfills its statutory obligation to disclose those records upon request. And although an agency must review records in responding to a FOIA request to see if any part of the records is subject to an exemption from disclosure, this process does not change the nature of the released records: an administrative report with redactions is still an administrative report; a non-administrative-report with redactions is still a non-administrative-report. Accordingly, Schindler's proposed categorical rule—that all records released by an agency in response to a FOIA request are "administrative reports"—should be rejected.

Moreover, that an agency's release of records in response to a FOIA request is not itself an "administrative report" is supported by the text of FOIA, which uses the words "response" and "release" to refer to an agency's disclosure of records in response to a FOIA request, *see, e.g.*, 5 U.S.C. § 552(a)(6)(E)(iv) ("response"); *id.* § 552(a)(2)(D) ("release"), but saves the word "report" for a different context, *id.* § 552(e)(1) (describing each agency's obligation to submit to the Attorney General an annual "report" containing certain FOIA-related information). And it accords with the common sense notion that when an individual submits a FOIA request, he or she is generally not asking the agency to "report" on the requested documents, but only to release them.

B. For similar reasons, an agency's release of records in response to a FOIA request is not an "administrative investigation." As an initial matter, it is well settled that agencies are not required to "investigate" potential misconduct or other information contained in the records when responding to a FOIA request.

See Kissinger, 445 U.S. at 152 (FOIA "only obligates [agencies] to provide access to [records] which it in fact has created and retained"); *Landmark Legal Found. v. EPA*, 272 F. Supp. 2d 59, 64 (D.D.C. 2003) ("[A]n agency is not required to answer questions disguised as a FOIA request . . . [or to] conduct research in response to a FOIA request.") (internal quotation marks and citations omitted). Therefore, FOIA requesters cannot use FOIA to force the government to conduct an investigation into wrongdoing or otherwise research an issue that the requester deems important.

Nonetheless, Schindler relies on the word "investigation" in the FCA's public disclosure bar, claiming that an agency's gathering of records in response to a FOIA request is in itself an "administrative investigation." Nothing in the process of releasing records in response to a FOIA request, however, involves what one would ordinarily call an "administrative investigation." Certainly, an agency must search its files to locate records that are responsive to the request. *See* 5 U.S.C. § 552(a)(3)(C) ("In responding . . . to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format . . . ."). But nowhere—not even in the definition of the term "search"—does FOIA use the word "investigation" to refer to an agency's retrieval of responsive records. *See id.* § 552(a)(3)(D) ("[S]earch' means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request."). And contrary to Schindler's argument (at 14, 20), the words "search" and "investigation" are not synonyms. For example, no one would refer to a "Google search" as a "Google investigation," or a "Westlaw search" as a "Westlaw

investigation." Yet this is exactly what Schindler would have this Court do because a search for agency records– many of which are stored in searchable electronic databases—comes much closer to a search on Google or Westlaw than it does, for example, to a government investigation into potential wrongdoing. Moreover, such a broad definition of "investigation" would rob another enumerated term—"audit"—of independent significance.

Schindler points to two unreported district court decisions to claim that "searches performed in response to FOIA requests are referred to in ordinary usage as 'FOIA investigations.'" Petr.'s Br. at 20-21. Schindler is wrong, as demonstrated by its inability to cite any other cases that use that phrase, despite the thousands of FOIA cases that have been decided in FOIA's 45-year history. In addition, FOIA itself does not use this language, *see, e.g.*, 5 U.S.C. § 552(a)(4)(A)(ii)(I) (discussing fees for "document search" not "document investigation"); and the Department of Justice's nearly 900-page Guide to the Freedom of Information Act does not use the word "investigation" even once to refer to an agency's search for responsive records. *See* http://www.justice.gov/oip/foia_guide09.htm (2009 ed.). In short, the phrase "FOIA investigation" is as foreign to those familiar with FOIA as are the phrases "FOIA probe" or "FOIA pursuit"—each of which contains a "synonym" of the word "search."

Schindler additionally argues that an agency's review of "responsive records to determine whether any of FOIA's nine exemptions to disclosure applies . . . comes within the ordinary meaning of 'investigation.'" Petr.'s Br. at 20. Schindler is correct that

agencies must look over the responsive records before releasing them to the requester, and this process often "require[s] a line-by-line review." DOL Guide. But even if this process could be called an "investigation"—which would be an unusual word to use for such a review—the records that are ultimately released, and the information they contain, are not the *products* of that "investigation." They exist independently of whether the "investigation" takes place. Reading records in the course of "investigating" does not automatically transform the records into investigatory records.

C. Rather than adopt Schindler's categorical rule, this Court should hold that, in the context of the FCA, FOIA disclosures are to be treated like other disclosures made by the government. That is, whether a record released by an agency in response to a FOIA request is an "administrative report" or the product of an "administrative investigation" should be determined by looking at the record itself. Otherwise, a record that is not itself an administrative report or the product of an administrative investigation would become one solely as a result of being disclosed to a requester. But the FCA's public disclosure bar includes *both* a requirement that the "allegations or transactions" be publicly disclosed *and* a requirement that they be contained in one of the enumerated sources. Releasing a record under FOIA may satisfy the "public disclosure" requirement. *See Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102 (1980) (holding that a disclosure under FOIA is a "public disclosure" within the meaning of the Consumer Product Safety Act). To hold, however, that disclosure under FOIA necessarily satisfies the requirement that the record fall within one of the enu-

merated sources would be to collapse these two separate requirements—each of which must be met in order to trigger the public disclosure bar—into one.

Indeed, Schindler repeatedly melds the FCA's public-disclosure and enumerated-source requirements into one. For example, Schindler states (at 1) that Congress enacted the public disclosure bar "to prohibit parasitic suits brought by persons whose claims were based on publicly disclosed information." But this statement is only partly true: *qui tam* claims that are based on "publicly disclosed information" will be barred only if that "information" is an "allegation[] or transaction[]" contained within an enumerated source (e.g., an "administrative report" or "administrative investigation"). *See* 31 U.S.C. § 3730(e)(4)(A). Congress could have created a public disclosure bar that was triggered whenever a *qui tam* action was based on information that had been publicly disclosed. It did not do so. Instead, Congress chose a public disclosure bar that included both a public disclosure requirement and an enumerated source requirement. This Court should not disturb that choice.

II. Schindler's Construction of Administrative "Report" and "Investigation" Is in Tension With the Purposes of FOIA.

By mandating efficient, prompt, and full disclosure of agency records, FOIA aims "to check against corruption," *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978), and to "promote honesty and reduce waste in government." *Maydak v. U.S. Dep't of Justice*, 218 F.3d 760, 764 (D.C. Cir. 2000). Similarly, by prohibiting false or fraudulent claims for payment to the federal government, the FCA intends to "combat[] 'fraud against the Government.'" *Allison Engine*

Co., Inc. v. United States ex rel. Sanders, 553 U.S. 662, 669 (2008) (quoting *Rainwater v. United States*, 356 U.S. 590, 592 (1958)). In this respect, FOIA and the FCA are complementary: both statutes seek to promote a better and more efficient government.

Schindler's construction of the FCA would undermine the complementary purposes of FOIA and the FCA. It would set up a scheme under which the public would be able to gain access to government records that reveal waste, fraud, and corruption, but then—as a consequence of such access—would not be allowed to bring an FCA action to remedy that wrongdoing. To avoid such a result, the principal congressional sponsors of the 1986 amendment to the FCA, which added the public disclosure bar, have expressly rejected, albeit in a post-enactment statement, the notion that the public disclosure bar categorically prohibits *qui tam* actions based in part or in whole on information contained in records released by an agency in response to a FOIA request.[4] This Court should do so as well.

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[4] *See* 145 Cong. Rec. 16032 (July 14, 1999) (statement of Rep. Howard Berman and Sen. Charles Grassley) ("[W]e want forcefully to disagree with cases holding that qui tam suits are barred if the relator obtains some, or even all, of the information necessary to prove fraud from publicly available documents, such as those obtained through a Freedom of Information Act (FOIA) request . . . . We believe that a [relator] who uses their education, training, experience, or talent to uncover a fraudulent scheme from publicly available documents, should be allowed to file a qui tam action.").

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

No. 10-188

In The
Supreme Court of the United States

SCHINDLER ELEVATOR CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA *ex rel.* DANIEL KIRK,

Respondent.

On a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

BRIEF FOR TAXPAYERS AGAINST FRAUD EDUCATION FUND AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

INTEREST OF *AMICUS CURIAE* 1

STATUTORY PROVISION INVOLVED 3

SUMMARY OF ARGUMENT 4

ARGUMENT 7

I. Schindler's Expansive View of the Jurisdictional Bar Fails To Give the Terms "Investigation" and "Report" Their Natural Meaning as Used in the Context of §3730(c)(4).... 7

II. Schindler's Expansive View Ignores Congress' Specified Exclusive List of Public Fora Limiting to Specific contexts the Agency Disclosures that Trigger the Bar 14

III. Schindler's Expansive View Ignores Congress' Specified Exclusive List of Public Fora Limiting to Specific contexts the Agency Disclosures that Trigger the Bar 19

CONCLUSION..... 32

TABLE OF AUTHORITIES

Cases

Cook County v. United States ex rel. Chandler, 538 U.S. 119 (2003) 23, 24

Graham County Soil & Water Conservation District v. United States, 130 S.Ct. 1396 (2010) ..... *passim*

Jarecki v. G. D. Searle & Co., 367 U.S. 303 (1961).. 11

Johnson v. United States, 529 U.S. 694 (2000)..... 30

Pettis ex rel. United States v. Morrison-Knudsen Co., 577 F.2d 668 (9th Cir. 1978) 22

United States ex rel. Biddle v. Bd. of Trustees of the Leland Stanford, Jr., University, 161 F.3d 533 (9th Cir. 1998) 28

United States ex rel. Bly-Magee v. Premo, 470 F.3d 914 (9th Cir. 2006) 28

United States ex rel. Garibaldi, 21 F. Supp. 2d 607 (E.D. La. 1998), *rev'd on other grounds* 244 F.3d 486 (5th Cir. 2001)..... 20

United States ex rel. Haight v. Catholic Healthcare West, 445 F.3d 1147 (9th Cir. 2006) ..... *passim*

United States ex rel. Kirk v. Schindler Elevator Corporation, 601 F.3d 94
(2d Cir. 2010) .....*passim*

United States ex rel. LaValley v. First Nat'l Bank of Boston, 707 F. Supp. 1351 (D. Mass. 1988)..... 20, 21

United States ex rel. Marcus v. Hess,
317 U.S. 537 (1943) ..... *passim*

United States ex rel. Minnesota Ass'n of Nurse Anesthetists v. Allina Health Sys. Corp.,
276 F.3d 1032 (8th Cir. 2002) 21

United States ex rel. Ondis v. City of Woonsocket,
587 F.3d 49 (1st Cir. 2009) 10

United States ex rel. Schumer v. Hughes Aircraft Co.,
63 F.3d 1512 (9th Cir. 1995), *vacated on other grounds*,
520 U.S. 939 (1997). 25

United States ex rel. State of Wisconsin v. Dean,
729 F.2d 1100 (7th Cir. 1984). 23, 27

United States ex rel. Williams v. NEC Corp.,
931 F.2d 1493 (11th Cir. 1991) 20

Wang v. FMC Corp., 975 F.2d 1412 (9th Cir. 1992)..24

Statutes

31 U.S.C. §232(C) (former law) 22

31 U.S.C. §3729(a) 7

31 U.S.C. §3730(b) 7

31 U.S.C. §3730(d) 13, 14

31 U.S.C. §3730(e)(4) ..... *passim*

Act of Mar. 2, 1863, ch. 67, 12 Stat. 696 ("1863 Act"), *reenacted by* Rev. Stat. §§ 3490-3494, 5438 (1878).. 20

Electronic Freedom of Information Act Amendments of 1996, P.L. 104-231 17

Federal Rules of Civil Procedure

Rule 8 18

Rule 9(b) 18

Rule 11 18

Legislative Material

H.R. Rep. No. 99-660, at 17 (1986); S. Rep. No. 99-345, at 8 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5273 20

Other Authorities

2 William Blackstone, *Commentaries* 161 20

Joel D. Hesch, *Restating the "Original Source Exception" to the False Claims Act's "Public Disclosure Bar,"* 1 Liberty U. L. Rev. 111 (2006) 14

Webster's Third New Int'l Dict. 1925 (2002) 10

INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae Taxpayers Against Fraud Education Fund ("TAFEF") is a nonprofit, tax-exempt organization dedicated to preserving effective anti-fraud legislation at the federal and state levels. The organization has worked to publicize the *qui tam* provisions of the False Claims Act, has participated in litigation as a *qui tam* relator and as an *amicus curiae*,[2] and has provided testimony to Congress about ways to improve the Act. TAFEF has a profound interest in ensuring that the Act is appropriately interpreted and applied. TAFEF strongly supports vigorous enforcement of the Act based on its many years of work focused on the proper interpretation and implementation of the Act.

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[1]All parties have consented to the filing of this brief. Counsel for *amicus curiae* represent that they authored this brief and no person or entity other than *amicus curiae* and its counsel made a monetary contribution to its preparation or submission.

[2]Taxpayers Against Fraud Education Fund has submitted briefs in this Court as *Amicus Curiae* in several cases in recent years, including: Brief for *Amicus Curiae, Rockwell Int'l Corp., et al. v. United States, et al.*, No. 05-1272 (U.S. Nov. 20, 2006); Brief of *Amicus Curiae, Allison Engine Co., Inc., et al. v. United States ex rel. Sanders*, No. 07-214 (U.S. Jan. 22, 2008), Brief of *Amicus Curiae, United States ex rel. Eisenstein v. City of New York, et al.*, No. 08-660 (Mar. 4, 2008), Brief of *Amicus Curiae, Graham County Soil & Water Conservation Dist., et al. v. United States ex rel. Wilson*, No. 08-304 (Oct. 26, 2009).

In this instance, *amicus curiae* TAFEF advocates against an expansive interpretation of the Act's public disclosure bar – a jurisdictional bar codified at 31 U.S.C. §3730(e)(4), as amended in 1986. TAFEF urges the Court to interpret the public disclosure bar consistent with its clear statutory purpose: to preclude only truly parasitic *qui tam* actions based upon public disclosure of the alleged fraud. Congress specified an exclusive list of public fora by which the jurisdictional bar may be triggered, intending to prevent opportunistic would-be litigants from riding the investigatory coattails of the government, the news media, or other civil litigants, unless they are an original source of information supporting the action.

When relators and their counsel obtain underlying documents and information from an agency during their pre-filing investigations, they fulfill their vital role envisioned by Congress in 1986 to root out fraud against the federal fisc. An expansive reading of the jurisdictional bar would preclude *qui tam* enforcement every time a federal, state or local government agency makes a search for agency records or discloses such records pursuant to the Freedom of Information Act ("FOIA") or other request by a single member of the public. This would be true even in cases where, as here, no governmental body or news agency conducted an inquiry into fraud upon the federal fisc alleged by the relator. Congress has recognized the importance of FOIA, stating that its use has led to the disclosure of waste, fraud, abuse and wrongdoing in the federal government. Relators and their counsel

who use FOIA during pre-filing investigations of possible *qui tam* actions are performing the exact role Congress envisioned for them in the passage of both FOIA and the False Claims Act.

Agency responses to a request for production of documents pursuant to FOIA or other public records laws are not the kind of disclosures that trigger the public disclosure bar. While an agency will look for and produce documents pursuant to FOIA requests, the agency does not engage in a substantive review or analysis of the requested records, investigate the underlying conduct reflected in the records, synthesize information, or report on allegations or substantive findings. Thus, agency responses to FOIA requests do not represent governmental work product in the nature of congressional, administrative and GAO reports, audits, hearings and investigations, and thus do not automatically trigger the jurisdictional bar of the False Claims Act.

STATUTORY PROVISION INVOLVED

31 U.S.C. §3730(e)(4):

> (A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the

person bringing the action is an original source of the information.

SUMMARY OF ARGUMENT

Schindler and its *amici* suggest this Court take an expansive view of the jurisdictional bar, and hold that *qui tam* actions are foreclosed any time a government entity searches for and produces documents in its possession. In their view, an agency's response under FOIA even to one individual constitutes a "public disclosure" in a statutorily specified forum. This is so even where – as is true here – there was no government effort to investigate possible fraud or wrongdoing. Contrary to that view, Congress did not intend to bar relators from using FOIA or other public disclosure laws during pre-filing investigations to assist in the prosecution of *qui tam* actions.

An expansive view of the bar could preclude a *qui tam* action any time there was a request for documents in the government's possession, a return to something akin to the 1943 law and the government knowledge bar. If Schindler's view is adopted, then the scope of the bar would practically encompass, or even exceed, the 1943 "government knowledge" standard. A request for disclosure of documents from a state or local government would, under that view, also result in an "administrative ... report ... or investigation" under §3730(e)(4), even though no federal, state or local entity had ever inquired into a fraud. The "federal government knowledge" bar would be replaced by one that is invoked any time a federal, state or local entity

searches for documents and reports the results of those searches to a private citizen.

Although a non-federal agency may be unlikely to publicly disclose an investigation or report of its own fraud as a way of inoculating itself against *qui tam* enforcement, an expansive view of the bar here would permit a scenario much worse. Any entity receiving federal funds would be able to escape *qui tam* jurisdiction by simply *requesting* public records of their dealings with the government. Any records obtained through FOIA would not be further disclosed to the general public. Thus, by merely causing a search for documents, and sitting on the results, private and public entities would be able to evade the Act without incurring any risk of self-exposure.

Schindler's interpretation also betrays the plain meaning of the text Congress enacted into law. Section 3730(e)(4) specified that the triggering public disclosure must fall within an enumerated list of public fora. In *Graham County*, this Court expressly noted the specification of "report, audit and investigation" was intended to limit to specific contexts the circumstances where an administrative agency's disclosure would trigger the bar. Yet under Schindler's proposed rule, every search for and production of records by an agency would be not just a disclosure, but also an administrative "investigation" and "report" as those terms are used in §3730(e)(4). In other words, every disclosure would be both a disclosure and an investigation and a report. The limiting words of the Act setting forth an exclusive list of contexts for the

bar's invocation by an agency disclosure would be ignored. Contrary to that view, Congress could not have intended for the public disclosure bar to be triggered every time there was a disclosure of information and records in a federal, state, or local administrative file.

In the Second Circuit below, the court correctly interprets the terms "report" and "investigation" in a manner consistent with the text, structure and context of the Act. "Report" and "investigation" cannot be interpreted in isolation; those terms must be read in the context in which they are used, and ike the other enumerated terms in the public disclosure bar, "report" and "investigation" suggest that someone has engaged in some activity involving the analysis or synthesis of information. As the court below found, it "strains the natural meaning of the statute to construe the terms 'report' and 'investigation' ... [to] include any and all materials produced in response to a FOIA request." An expansive view would transform the mere search for and disclosure of government documents into the "one type of context" where a government disclosure can trigger the bar, inconsistent with the meaning of the neighboring text. Disclosure of a public record is merely that, a disclosure; the mere fact that a public record has been disclosed does not automatically transform the record into an administrative report and investigation, consistent with the meaning of the words used in §3730(e)(4).

ARGUMENT

I. Schindler's Expansive View of the Jurisdictional Bar Fails To Give the Terms "Investigation" and "Report" Their Natural Meaning as Used in the Context of §3730(e)(4)

This case involves allegations that Petitioner Schindler Elevator Corporation knowingly provided false reports and false certifications of statutory compliance to wrongfully procure federal contract funds, in violation of the False Claims Act, 31 U.S.C. §3729(a). Relator and respondent Kirk brought this action under the *qui tam* provisions of the False Claims Act, §3730(b), seeking to recover damages and penalties on behalf of the federal government for Schindler's alleged violations. During his pre-filing investigation of his potential False Claims Act suit, Kirk used FOIA to obtain underlying supporting documentation and information from the Department of Labor (DOL). Kirk's *qui tam* action was based, in part, on the underlying records and information disclosed by the agency.

Prior to Kirk's *qui tam* suit, no agency had conducted an inquiry into Schindler's compliance with federal requirements or the veracity of its reports. No criminal or civil hearing had inquired into its conduct. And no news media had publicly disclosed allegations regarding its claims for federal funds. Kirk himself, based upon his own suspicions, investigated claims that Schindler had violated the False Claims Act prior to filing suit. As part of his investigation, his wife made several requests under FOIA to obtain

underlying documents – Schindler's VETS-100 reports. "Kirk became suspicious, based on his own experience as a Vietnam veteran employed by Schindler, that Schindler was not in compliance ... To confirm this suspicion, however, he needed copies of Schindler's VETS-100 reports, and the readiest lawful means through which he could obtain them was a FOIA request. Once he had received copies of the existing reports, and learned that no reports had been filed for certain years, he was able to put the pieces of his lawsuit together." *United States ex rel. Kirk v. Schindler Elevator Corp.*, 601 F.3d 94, 110 (2nd Cir. 2010).

In responding to the Kirks' FOIA request, DOL disclosed to the Kirks some of Schindler's VETS-100 reports and that it could not find other such reports. *Id.* at 101. At no time prior to the filing of Kirk's *qui tam* action – including in its response to the FOIA request – did the agency investigate, audit or otherwise issue any report on Schindler's compliance. DOL conducted no analysis or synthesis of information contained in the letters or reports, made no substantive inspection of the content of those records, and issued no work product reflecting any government analysis or consideration. SA-100, 106; Res. Br., at 57.

As the Second Circuit noted, Kirk's use of FOIA during his pre-filing investigation was not exceptional. For instance, in *United States ex rel. Haight v. Catholic Healthcare West*, 445 F.3d 1147 (9th Cir. 2006), a relator alleged that false statements were made to the National Institutes of Health to secure

federal funds in violation of the Act. Like Kirk, prior to filing suit, relator Haight investigated her own suspicions, used FOIA to obtain underlying documentation and did not learn of the fraud through any investigatory work product of NIH. Also like this case, prior to the time relator Haight filed action, no government agency had conducted any investigation or inquiry – publicly disclosed or not – into her allegations, nor had those allegations been publicly disclosed otherwise. The extent of the administrative action in *Haight* was *de minimus*, as the FOIA response she received only alerted her to the location of the documents relating to her fraud allegations. Far from putting any work product into those documents, in this instance the FOIA response did not even involve any duplication. *Haight*, 445 F.3d at 1155.

Neither this case nor Haight, then, involved a relator who used FOIA to obtain a pre-existing governmental report, audit, hearing or investigation that disclosed any governmental inquiry into the matters alleged to be fraudulent. No such government work product even existed. In both cases, documents disclosed through FOIA were the raw materials necessary for the investigation and pleading of the relators' respective *qui tam* actions.

Petitioner Schindler and its *amici* advocate for an expansive view of the False Claims Act's public disclosure bar, in which every response by a governmental agency to a private request for production of public documents is a public disclosure in at least one of the specified fora listed in

§3730(e)(4)(A). This view assumes that an agency's search for requested documents is always an "administrative investigation" and that an agency's disclosure of records and the results of its search to the requesting individual is always an "administrative report" triggering the bar. Schindler's proposed view is incorrect.

Amicus curiae agree with the Second Circuit that "it strains the natural meaning of the [False Claims Act] to construe" the terms administrative "report" and "investigation" "so that they include any and all materials produced in response to a FOIA request." *Kirk*, 601 F.3d at 107. "In this context, the term "report" most readily bears a narrower meaning than simply 'something that gives information.'" *Id.* (*quoting United States ex rel. Ondis v. City of Woonsocket*, 587 F.3d 49, 56 (1st Cir. 2009) (citing Webster's Third New Int'l Dict. 1925 (2002). The Petitioner's suggested interpretation of administrative "report" expands the type of governmental activity, or the context for agency disclosure, contemplated in §3730(e)(4), to the same contours as "disclosure." This interpretation swallows whole the intent to specify a subclass of government work product and processes of disclosure. As the Second Circuit stated, the term "report," as used in the public disclosure bar,

> [c]onnotes the compilation or analysis of information with the aim of synthesizing that information in order to serve some end of the government, as in a "hearing" or "audit." It does not naturally extend to

> cover the mechanistic production of documents in response to a FOIA request made by a member of the public. Similarly, the term "investigation," in the context of the statute, must be construed more narrowly than simply a "detailed examination" or "search." Instead, an "investigation" here implies a more focused and sustained inquiry directed toward a government end – for example, uncovering possible noncompliance or assembling information relevant to a problem of particular concern to the government.

Kirk, 601 F.3d at 107 (internal citation omitted).

Both the majority and dissenting opinions in *Graham County* appear to support the Second Circuit's use of the *noscitur a sociis* canon, when determining the meaning of the words used in the public disclosure bar provision. *Kirk*, 601 F.3d at 107 n.6. As pointed out by Justice Sotomayor, both opinions invoked the canon when looking to the shared core of meaning for "audit, report and investigation" to conclude that "administrative" refers to a governmental entity. *See Graham County*, 130 S.Ct. at 1412 (Sotomayor, dissenting). This case is thus more like the situation in *Jarecki v. G. D. Searle & Co.*, 367 U.S. 303, 307 (1961)), where the terms "exploration, discovery, or prospecting" shared a core connotation to describe income-producing activity in the oil and gas and mining industries. *See Graham County*, 130 S.Ct. at

1403 n.7. Indeed, the majority in *Graham County* specifically relied upon the shared core of meaning for "report, audit or investigation" in stating that these terms limited the "one type of context" in which a disclosure by an administrative agency could trigger the jurisdictional bar. *Graham County*, 130 S.Ct. at 1410.

Viewing the terms "report" and "investigation" in the context of the entire jurisdictional bar – especially in light of the structure and historical context of the False Claims Act – it becomes apparent that DOL did not make a public disclosure to the Kirks in any administrative report or investigation. Instead, the agency merely produced the reports that Schindler was required to submit, and informed the Kirks as to which ones were missing. There was no substantive review of the materials or any attempt to inquire into Schindler's compliance. Similarly, in *Haight*, NIH did not produce a written product at all in response to the FOIA request. In both cases – and in many other instances where relators use FOIA during pre-filing investigation of potential False Claims Act violations – the investigatory efforts of the relator helped identify the fraud. Petitioner's proposed expansive interpretation of administrative "report" and "investigation" would thwart the efforts of meritorious relators to file comprehensive *qui tam* complaints.

Petitioner's claim that the public disclosure bar was intended to promote *qui tam* actions only by relators with direct and independent knowledge of the fraud runs contrary to the true statutory purpose of

§3730(e)(4). That statutory bar is intended only to prohibit parasitic *qui tam* actions, and to create an exception for relators who would otherwise be parasitic but who made a meaningful contribution to the government's recovery. It is in §3730(d) that Congress offered graduated incentives for persons with knowledge to come forward; it is in the provisions of the public disclosure bar codified at §3730(e)(4) that Congress intended to deal with the problems of parasitic *qui tam* actions.

Contrary to Petitioner's assertion, there is no stand-alone requirement that relators enforcing the False Claims Act's *qui tam* provisions have direct and independent knowledge of the information of the fraud. The requirement of "original source" status does not arise unless all of the parasitic elements of *Hess* are present. As the text of §3730(e)(4) makes clear, the requirement that a relator have "direct and independent" information supportive of the action only comes into play after there has been a determination that the action is based upon the public disclosure of the allegations in one of the statutorily specified fora. Absent the parasitic scenario, a relator's knowledge of information going into the action – beyond that required to satisfy federal pleading requirements – is of no moment.

While it is true that Congress, in the False Claims Act as a whole, struck a balance between rooting out fraud with effective qui tam enforcement and prohibiting recovery on parasitic lawsuits, the particular provisions of §3730(e)(4) have to do

exclusively with the latter. Section 3730(d), which addresses the relator's share of the government's recovery, contains the provisions of the False Claims Act that are designed to encourage individuals to come forward with knowledge of potential fraud and seek qui tam enforcement. The express terms of this provision provide a graduating set of rewards based upon the extent of the relator's knowledge of the fraud and the extent to which the action is based on prior public disclosures. *See generally* Joel D. Hesch, Restating the "Original Source Exception" to the False Claims Act's "Public Disclosure Bar," 1 Liberty U. L. Rev. 111 (2006), at 112-117, 140-152 (explaining the significance of the Act's "graduated knowledge" structure). Simply stated, the public disclosure bar was designed to preclude parasitic relators from filing *qui tam* actions, and relator Kirk's use of FOIA to obtain raw documents in support of his investigation of Schindler's alleged fraud was not parasitic at all. Relators like Kirk should be encouraged to thoroughly investigate their suspicions before filing *qui tam* suits, and not barred from assisting the government in combating and prosecuting fraud.

II. Schindler's Expansive View Ignores Congress' Specified Exclusive List of Public Fora Limiting to Specific contexts the Agency Disclosures that Trigger the Bar

Section 3730(e)(4) specifies that the triggering public disclosure must fall within an exclusive list of specified public fora: in a criminal, civil, or administrative hearing; in a congressional,

administrative, or GAO report, hearing, audit, or investigation; or from the news media. There is no disagreement that the specified public fora in §3730(e)(4) is an "exclusive list." *Kirk*, 601 F.3d at 104 ("Section 3730(e)(4)(A) furnishes an exclusive list of the ways in which a public disclosure must occur for the jurisdictional bar to apply").

After this Court's decision in *Graham County Soil & Water Conservation District v. United States*, there also can be no disagreement that specification of "report, audit or investigation" as this exclusive list was intended by Congress as a limit on the types of agency disclosures that would trigger the bar to particular contexts. *See Graham County Soil & Water Conservation District v. United States*, 130 S.Ct. 1396, 1410 (2010) ("Today's ruling merely confirms that disclosures made in one type of context – a state or local report, audit, or investigation – may trigger the public disclosure bar"). Of the contexts in which an administrative entity could make a public disclosure of allegations or transactions, the "one type of context" where an agency disclosure triggers the bar is when there has been an administrative "report, audit, hearing or investigation."

Schindler's proposed rule would turn every search for and disclosure of records by an agency into the one type of government activity intended by Congress to preclude *qui tam* actions. Such a view ignores the clear directive of the statute, recognized by this Court in *Graham County*, that only a subclass of agency disclosures in one type of context, namely

agency reports, audits and investigations, triggers the bar. That view ignores the requirement that courts give meaning to the plain terms of the statute.

If every disclosure by an administrative agency of a document in its possession – without regard to the nature of that document – constitutes a "public disclosure in an administrative investigation and report," then the specification of a subclass of agency disclosures would be unnecessary. If Congress intended every agency disclosure of documents in its possession to be an "administrative report," then §3730(e)(4)(A) would have a different look. Rather than reading, in pertinent part, that a *qui tam* action is barred if it is "based upon the public disclosure ... in a congressional, administrative or GAO report, audit, hearing or investigation" the statute would bar actions "based upon a disclosure of documents or evidence in the possession of a congressional, administrative or GAO agency." Specification of the limiting fora would be superfluous and would be omitted from the text. Certainly, Congress intended to narrow the subclass of barred *qui tam* actions by specifying in the statute an exclusive list of sources for public disclosure. It could not have intended that the search for and disclosure of government records alone was equivalent to the performance of an administrative investigation and report, as those terms are used in the jurisdictional bar.

An expansive interpretation of §3730(e)(4) would clearly undermine the primary purpose of Congress in 1986 to increase *qui tam* investigation and

enforcement under the Act. It certainly did not express any intent to forbid relators from relying on FOIA in efforts to enforce the law's provisions. Indeed, in the stated "Findings and Purpose" of the 1996 FOIA amendment – coming 10 years after the False Claims Act amendments – Congress found "the Freedom of Information Act has led to the disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government." Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048 (1996). No reason exists to exclude this valuable tool from efforts by relators to investigate *qui tam* actions and enforce the False Claims Act.

Permitting *qui tam* claims to go forward based on otherwise non-public information obtained through FOIA has the "happy effect of encouraging private citizens with suspicions of fraud to take the most expeditious route toward uncovering information related to that fraud and hastening recovery for the government." *Haight*, 445 F.3d at 1155 n.5. Consistent with the purposes of both FOIA and the False Claims Act, relators and their counsel often need to rely upon FOIA and other avenues to access public records during a pre-filing investigation. "[H]olding that a FOIA response is necessarily a 'report' or 'investigation' would deter individuals who suspect fraud from investigating it. FOIA requests are one of the simplest vehicles by which interested citizens can uncover possible fraud against the government." *Id.*

With respect to pre-filing investigations, to proceed in court relators and their counsel must satisfy

the pleading requirements of Rules 8, 9(b) and 11 of the Federal Rules of Civil Procedure. Although some already possess information and evidence necessary to meet these pleading requirements with little additional pre-filing investigation, relators who suspect fraud often will turn to FOIA and state public records acts to obtain the underlying raw materials of their investigations. As noted supra, at page 13, the False Claims Act does not require relators to have direct and independent knowledge of new or inside information in order to seek *qui tam* enforcement of the law. By the time an action is filed, however, per Rule 8, relators and their counsel must be able to plead a concise statement of facts establishing entitlement to relief under the Act. In accordance with Rule 9(b), they must also plead matters of fraud with particularity. And pursuant to Rule 11, they must certify that their factual allegations and legal theories are or will be based upon evidentiary support and existing law, after an inquiry reasonable under the circumstances.

An expansive view would discourage relators from using FOIA during pre-filing investigations, and might even cause them to forego the investigation of suspected fraud all together. Facing the requirements of Rules 8, 9(b) and 11, and the prospect of an expansive application of the jurisdictional bar, relators would limit their focus on only that fraud which could be investigated without review of government records, which is not what Congress intended when it created the public disclosure bar in 1986. As the Ninth Circuit observed, "prohibiting *qui tam* relators from basing their allegations on any information obtained in a

FOIA response would damage the fraud-detection purpose of the FCA while failing to serve its twin goal of preventing opportunism." *Haight* 445 F.3d at 1155; *see also Kirk*, 601 F.3d at 109 ("Congress' avowed goal was, generally, to 'encourage more private enforcement' of the FCA through expansion of its *qui tam* provisions, and, more specifically, to 'correct[] restrictive interpretations of the act's ... qui tam jurisdiction'") (internal citations omitted).

III. Schindler's Expansive View of the Jurisdictional Bar Conflicts With the Manifest Congressional Purpose to Expand *Qui Tam* Enforcement Through the 1986 Amendments

While Petitioner advocates for an unworkable, expansive view of the public disclosure bar, the Second Circuit correctly joined the Ninth Circuit and adopted a more balanced, moderate view, holding that a response to a FOIA request by a private party does not constitute a public disclosure triggering the bar, unless the documents themselves are a product of governmental processes exclusively listed in §3730(e)(4)(A). This view understands that an agency's search for and production of records – in and of itself – does not involve the investigatory processes or work product generated in the one limited context of the bar. The view permits relators to use FOIA during pre-filing investigations to obtain necessary documents and information on potential fraud.

Moreover, this moderate view is consistent with Congress' intent to abolish the "government knowledge bar" – a provision that preceded the public disclosure

bar and prohibited relators from filing *qui tam* suits that merely restated information that was already in the government's possession.

The False Claims Act, known as "Lincoln's Law," was originally passed in 1863 during the Civil War to help recover government funds lost through fraud and waste.[3] In its initial form, the law contained *qui tam* provisions authorizing private persons to enforce the statute's proscriptions, without limitation as to who could serve as a relator. The Act was based on the theory that providing to "a confederate a strong temptation to betray his coconspirator," would produce valuable information, but the scope of persons who could serve as relators was "not confined to that class." Cong. Globe, 37th Cong., 3d Sess. 955-56 (1863).[4] Eventually, a concern rose among the Attorney General and lower federal courts about would-be

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[3]*See* Act of Mar. 2, 1863, ch. 67, 12 Stat. 696 ("1863 Act"), *reenacted by* Rev. Stat. §§ 3490-3491, 5438 (1878), *see also United States ex rel. Williams v. NEC Corp.*, 931 F.2d 1493, 1496-97 (11th Cir. 1991) (recounting FCA history); *United States ex rel. LaValley v. First Nat'l Bank of Boston*, 707 F. Supp. 1351, 1354 (D. Mass. 1988) (same); H.R. Rep. No. 99-660, at 17 (1986); S. Rep. No. 99-345, at 8 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5273.

[4]The phrase *qui tam* is a shortened version of the Latin phrase "qui tam pro domino rege, quam pro se ipso in hac parte sequitur," meaning "who prosecutes this suit as well for the king, as for himself." *See United States ex rel. Garibaldi*, 21 F. Supp. 2d 607, 609 (E.D. La. 1998) (*citing* 2 William Blackstone, *Commentaries* 161), *rev'd on other grounds* 244 F.3d 486 (5th Cir. 2001).

relators who – acting only as parasites – "sued upon information copied from government files and indictments." *See Williams*, 931 F.2d at 1497; *Minnesota Ass'n*, 276 F.3d at 1041; *LaValley*, 707 F. Supp. at 1354.

This issue came before the Court in 1943, in *United States ex rel. Marcus v. Hess*, 317 U.S. 537 (1943). There, the federal government had already investigated a defendant for fraudulent activity and had made public its findings by filing a criminal indictment in the court files. Relator Marcus merely copied that criminal indictment and filed it as his own identical *qui tam* action under the False Claims Act. In *Hess*, the government sought to persuade this Court that the False Claims Act did not authorize Hess' purely "parasitic" suit. The Court, however, viewing the issue as a straightforward question of statutory construction, disagreed with the government, noting that the False Claims Act contained "no words of exception or qualification such as we are asked to find." *United States ex rel. Marcus v. Hess*, 317 U.S. 537, 547 (1943). The Court also rejected the Government's argument that allowing such suits was contrary to the purposes of the Act. The Court observed that even if the relator "contributed nothing to the discovery of this crime, he has contributed much to accomplishing one of the purposes for which the Act was passed. The suit results in a net recovery for the government of ... three times as much as fines imposed in the criminal proceedings." *Id.* at 545.

Following *Hess*, Congress immediately amended the False Claims Act. The 1943 amendments added a jurisdictional bar for the first time, formerly codified at 31 U.S.C. §232(C), precluding actions that were "based on evidence or information in possession of the United States, or any agency, officer or employee thereof, at the time such suit was brought." This "government knowledge bar," precluded *qui tam* enforcement on the basis of documents and information in the government's files. Courts interpreted the 1943 bar to apply whenever "the evidence and information in possession of the United States ... was sufficient to enable it adequately to investigate the case and to make a decision whether to prosecute." *Pettis ex rel. United States v. Morrison-Knudsen Co.*, 577 F.2d 668, 674 (9th Cir. 1978).

The 1943 amendment was worded broadly, foreclosing important *qui tam* enforcement provisions without regard to who in the government bureaucracy had the information, whether the information was being processed, or whether the government was taking any efforts to recover from the fraud, since even when the government was in possession of such information, officials could determine, for lack of resources or political will, not to seek remedies. Furthermore, courts applying the 1943 law routinely barred *qui tam* actions based on information known to the government, even when it was the relator who had brought the information to the government's attention.

For example, in the seminal case of *United States ex rel. State of Wisconsin v. Dean*, 729 F.2d 1100, 1104 (7th Cir. 1984), the Seventh Circuit reviewed the legislative history of the 1943 amendments in detail, rejecting the State of Wisconsin's request for an exemption from the "government knowledge" bar. Wisconsin had already investigated and convicted the defendant of Medicaid fraud, and pursuant to regulations, had reported information supporting the fraud to the federal government. The court noted that, while a draft of the Senate bill for the 1943 amendment would have permitted a qui tam action despite government knowledge when the relator was an original source of the information, it also noted that the House version would have abolished qui tam actions all together. Because the final compromise in the 1943 amendment retained *qui tam* enforcement, enacted the government knowledge bar and omitted any exception for an original source, the Seventh Circuit in *Dean* concluded that Wisconsin could not maintain its *qui tam* action. The court noted that any exemption should be obtained from Congress. *United States ex rel. State of Wisconsin v. Dean*, 729 F.2d 1100, 1106 (7th Cir. 1984).

Congress responded in 1986, and in the midst of increasing concern over fraud, the False Claims Act was overhauled once again, "to make the FCA a 'more useful tool against fraud in modern times.'" *Cook County v. United States ex rel. Chandler*, 538 U.S. 119, 133 (2003) (quoting S. Rep. No. 99-345, p. 2 (1986)). In the 1986 version of the Act, Congress sought to overturn the federal courts' "severely restrictive

interpretations." *Wang v. FMC Corp.*, 975 F.2d 1412, 1419 (9th Cir. 1992); *see also Graham County* 130 S.Ct. at 1409 ("We do not doubt that Congress passed the 1986 amendments to the FCA 'to strengthen the Government's hand in fighting false claims,' and 'to encourage more private enforcement suits,'") (citations omitted).

Importantly, the 1986 amendments fundamentally altered the underlying assumption of the 1943 law that the *qui tam* provisions were designed to assist the government only when it was not in possession of the information supporting the claim of fraud. *See Graham County*, 130 S.Ct. at 1410 (because the statutory touchstone is whether the allegations of fraud have been publicly disclosed in a specified forum, whether the information is likely to come to the attention of, or into the possession of, the government is not the right question).

Through the 1986 amendments, Congress also dispensed with the idea that, in order to be a non-parasitic relator, the *qui tam* plaintiff must bring forth new or inside information of the fraud. "By replacing the Government knowledge bar with the current text of § 3730(e)(4)(A) and including an exception for 'original source[s],' Congress 'allowed private parties to sue even based on information already in the Government's possession.'" *Graham County*, 130 S.Ct. at 1415 (Sotomayor, J., dissenting) (*quoting Cook County*, 538 U.S. at 133).

[I]n passing the 1986 amendments, Congress specifically sought to diminish the government's ability

"to sit on, and possibly suppress, allegations of fraud when inaction might seem to be in the interest of the government." *See, e.g. United States ex rel. Schumer v. Hughes Aircraft Co.*, 63 F.3d 1512, 1519 (9th Cir. 1995) (internal citation omitted), vacated on other grounds, 520 U.S. 939 (1997). The 1986 amendments also reflected Congress' recognition that the government simply lacks the resources to prosecute all viable claims, even when it knows of fraudulent conduct. *See id.*

Congress enacted the precise terms of §3730(e)(4) to narrow the subclass of excluded *qui tam* actions to include only those that were truly "parasitic" like the case of *Hess*, where the relator learned of the fraud through the public disclosure of the government's own allegations in a criminal indictment following the government's own investigation into the defendant's conduct. As this Court noted in *Graham County*:

> Congress apparently concluded that a total bar on qui tam actions based on information already in the Government's possession thwarted a significant number of potentially valuable claims. Rather than simply repeal the Government knowledge bar, however, Congress replaced it with the public disclosure bar in an effort to strike a balance between encouraging private persons to root out fraud and stifling parasitic lawsuits such as the one in Hess.

Graham County, 130 S.Ct. at 1407.

That Congress had *Hess* in mind when it amended the bar in 1986 is made clear by the fact that each of the four elements in *Hess* was made an express requirement of the 1986 version of the jurisdictional bar:

(1) The action must be "based upon" the disclosure; as occurred in *Hess* when the relator derived his knowledge from the filing of the criminal indictment.

(2) The disclosure must be "public"; as occurred in *Hess* when the criminal indictment was placed in the court's open files.

(3) The content of the disclosure must be of the "allegations or transactions" of the fraud or false claims, and not just information and evidence upon which the allegations are based; as occurred in *Hess* when the information in the indictment expressly stated that the defendant had engaged in fraud.

(4) The medium of the disclosure must be one of the specified public fora; as occurred in *Hess* when a pleading was filed in connection with a federal investigation and criminal hearing.

Congress's purpose in amending the public disclosure bar – at least with respect to the issue here – is thus readily evident. The 1986 amendments were designed to eliminate the government knowledge defense and to narrow the class of excluded *qui tam* actions to those situations where opportunistic relators ride the investigatory coattails of the government's own processes. Congress chose the precise text of

§3730(e)(4) to parallel the circumstances in *Hess*, and it created an express exception based perfectly on the parallels of *Wisconsin v. Dean* (disclosure of direct and independent information by the relator prior to suit).

The expansive view advocated by the Petitioner would return the False Claims Act's *qui tam* provisions to the old "government knowledge bar," as it would create a framework within which all government agencies' responses to FOIA requests would automatically be deemed public disclosures that would bar relators from filing *qui tam* actions, regardless of the nature of the information (or lack thereof) contained in the agencies' responses. Congress has already explicitly rejected that standard.

Indeed, in light of *Graham County*, an expansive reading of the public disclosure bar would even exceed the 1943 "government knowledge" standard, since any request for the disclosure of documents made to any state or local administrative government would result in an "administrative ... report ... or investigation" under §3730(e)(4). This would be so even though no federal, state or local entity ever made any inquiry in to the substance of the alleged fraud. The 1943 bar applied when information was in the possession of the federal government – yet the Petitioner's proposed more expansive rule would invoke the bar based on the mere search for records by a local agency.

Adoption of an expansive view of the jurisdictional bar would also undermine Congress' intentions by permitting any private or government entity to inoculate itself against *qui tam* enforcement

by setting in motion a request for the private disclosure of raw documents. In *Graham County*, this Court found the concern over local governments insulating themselves from *qui tam* liability through careful "low level" disclosures to rest on "rather strained speculation," since the effort would require a public self-disclosure of fraud. *Graham County*, 130 S.Ct. at 1410 ("it is unlikely that an agency trying to cover up its fraud would reveal the requisite 'allegations or transactions' underlying the fraud in a public document") (quoting *United States ex rel. Bly-Magee v. Premo*, 470 F.3d 914, 919 (9th Cir. 2006)). In this case, though, the concern issue is not public self-reporting of fraud; instead, the worry is that potential defendants could escape liability by simply making a request for documents from an agency under FOIA or other state law. Under an expansive view of the public disclosure bar, courts would be deprived of jurisdiction over a relator's claims even when there was no governmental investigation into fraud – as is the cases in *Kirk* and *Haight*.

Moreover, if a disclosure to one individual under FOIA is considered a "public disclosure," then application of an expansive bar would be unworkable. As interpreted by some lower courts, a relator need not even know about a "public disclosure" for his or her *qui tam* action to be "based upon" it. *See United States ex rel. Biddle v. Bd. of Trustees of the Leland Stanford, Jr., University*, 161 F.3d 533, 538-40 (9th Cir. 1998). Thus, if the disclosure of records pursuant to FOIA to one person always constitutes a public disclosure in a specified forum, *qui tam* actions would be barred by the

single production of records to people who might never publicize them to anyone else. Indeed, under an expansive view, a potential private or government defendant could secure protection from *qui tam* litigation themselves by processing public records requests for raw documentation of their own conduct. Such conduct would not result in the public self-reporting of fraud; it would be the private search for records in an agency's possession. Any records produced could be kept from publication. While others may well have "access" to the same records through FOIA, such access to documents and information in the government's files cannot – after the 1986 amendments – be a basis for excluding *qui tam* actions as parasitic.

As Schindler acknowledges (Pet.'s Br. at 22), citing *Johnson v. United States*, 529 U.S. 694, 710 n.10 (2000), when interpreting a statute, this Court's "obligation is to give effect to congressional purpose so long as the congressional language does not itself bar that result." In amending the False Claims Act in 1986, Congress sought to expand, not restrict, *qui tam* enforcement. Schindler urges an overly expansive view of the public disclosure bar which, if adopted, would have the opposite effect. In "interpreting the jurisdictional bar," the Court should "'look first to the plain language of the statute, construing the provisions of the entire law, including its object and policy, to ascertain the intent of Congress.'" *Haight*, 445 F.3d at 1153 (citations omitted). Construing the language in light of its text, object and policy, the evident purpose behind the 1986 amendments was to preclude truly parasitic actions where would-be relators attempt to

ride the investigatory coattails of a governmental process or the news media. Congress would have no purpose served, and many defeated, by legislating that an agency's mere response under FOIA triggers the bar.

In *Graham County*, this Court found "no 'evident legislative purpose' to guide [its] resolution of the discrete issue that confront[ed]" it in the same subsection of the Act. 130 S. Ct. at 1406-07. *Graham County* answered whether an administrative agency under §3730(e)(4) must be federal, a discrete issue that is distinct from the one presented here. The clear purpose of Congress in amending the Act in 1986 was to remove the government knowledge bar and replace it with one that excluded only truly parasitic actions, as defined by the circumstances presented in *Hess*. While such purposes did not inform on whether "administrative" meant exclusively federal, they control the interpretation of the words "report" and "investigation" as those terms are used in §3730(e)(4).

There is a crucial distinction between the two issues of statutory construction. In *Graham County*, the question was whether the agency conducting an administrative effort leading to the public disclosure of alleged fraud must be federal to activate the Act's jurisdictional bar. This Court found these purposes had no bearing on the issue of whether states and local agencies were included. Here, however, it is not the character of the governmental entity at issue, but the nature of the administrative effort required to trigger the bar. On that distinct issue, there is a palpable

overriding purpose: to limit the bar to purely parasitic lawsuits, where the relator rides the investigatory coattails of the government or news media. The 1986 Congress – reacting to the scope of the 1943 version of the bar, which itself was a reaction to the circumstances of *Hess* – specified an exclusive list of public fora in which public disclosures would bar *qui tam* actions. Each of the specified governmental sources that could trigger the bar involve official work-product: investigations, hearings, audits and reports. All of these sources are of "the one type of context" that could lead to public allegation of fraud in a manner that would trip the bar. Congress clearly intended to define the parasitic *qui tam* relator as one whose action under the False Claims Act was based upon public disclosure of that official work product. Petitioner's proposed view is at odds with Congressional intent, and should not be adopted by this Court.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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IN THE

Supreme Court of the United States

SCHINDLER ELEVATOR CORPORATION,
Petitioner,

v.

DANIEL KIRK,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF UNITED TECHNOLOGIES CORPORATION AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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(14)

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF *AMICUS CURIAE*	1
STATEMENT OF THE CASE	3
SUMMARY OF ARGUMENT	4
ARGUMENT	6
I. THE SECOND CIRCUIT'S DECISION MISINTERPRETS THE EFFECTIVE DATE IN THE FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009	6
CONCLUSION	9

TABLE OF AUTHORITIES

CASES	Page
Allison Engine Co. v. United States, ex rel. Sanders, 128 S. Ct. 2123 (2008)	6
Hopper v. Solvay Pharms., Inc., 588 F.3d 1318 (11th Cir. 2009)	3
Mason v. Medline Indus., Inc., __ F. Supp. 2d __, C.A. No. 07C5615, 2010 WL 653542 (N.D. Ill. Feb. 18, 2010)	4
Russello v. United States, 464 U.S. 16, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983)	8
United States ex rel. Baker v. Cmty. Health Sys., Inc., __ F. Supp. 2d __, Civ. No. 05-279, 2010 WL 1740624 (D.N.M. Mar. 19, 2010)	4
United States ex rel. Burroughs v. Cent. Ark. Dev. Council, No. 4:08CV2757, 2010 WL 1542532 (E.D. Ark. Apr. 19, 2010)	3-4
United States ex rel. Carpenter v. Abbott Labs., Inc., __ F. Supp. 2d __, C.A. No. 07-10918, 2010 WL 2802686 (D. Mass. July 16, 2010)	3, 4
United States ex rel. Drake v. NSI, Inc., __ F. Supp. 2d __, No. 3:94-cv-963, 2010 WL 3417854 (D. Conn. Aug. 26, 2010)	2
United States ex rel. Gonzalez v. Fresenius Med. Care N. Am., No. EP-07-CV-247, 2010 WL 1645971 (W.D. Tex. Mar. 31, 2010)	4

Page

United States ex rel. Kirk v. Schindler Elevator Corporation, 601 F.3d 94 (2d Cir. 2010) 2, 3, 4, 7

United States ex rel. Parato v. Unadilla Health Care Ctr., Inc., C.A. No. 5:07-cv-76, 2010 WL 146877 (M.D. Ga. Jan. 11, 2010) 4

United States ex rel. Pilecki-Simko v. Chubb Inst., C.A. No. 06-3562, 2010 WL 1076228 (D.N.J. Mar. 22, 2010) 4

United States ex rel. Putnam v. E. Idaho Reg'l Med. Ctr., 696 F. Supp. 2d 1190 (D. Idaho 2010) 4

United States ex rel. Sanders v. Allison Engine Co., 667 F. Supp. 2d 747 (S.D. Ohio 2009) 4

United States v. Sci. Applications Int'l Corp., 653 F. Supp. 2d 87 (D.D.C. 2009) .. 4, 9

United States ex rel. Steury v. Cardinal Health, Inc., No. 09-20718, 2010 WL 4276073 (5th Cir. Nov. 1, 2010) 4

STATUTES

Fraud Enforcement And Recovery Act of 2009, 123 Stat. 1617 (2009) ..... *passim*

False Claims Act, 31 U.S.C. § 3729 *et seq.* (2009) ..... *passim*
31 U.S.C. § 3729(a)(2) ..... *passim*
31 U.S.C. § 3729(b)(2) 3, 4, 5, 7

TABLE OF AUTHORITIES—Continued

Page

OTHER AUTHORITIES

S. Rep. No. 111-10 (2009) 6
S. Rep. No. 110-10 (2009) [sic] 9

IN THE

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On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF UNITED TECHNOLOGIES CORPORATION AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

INTEREST OF *AMICUS CURIAE* [1]

United Technologies Corporation ("UTC") submits this *amicus* brief to alert the Court to what it views as an error embedded in the decision below, which

[1] This *amicus* brief is filed with the consent of the petitioner and the respondent, in accordance with Rule 37.3(a). Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

might not otherwise be identified by the parties to this appeal. UTC urges the Court not to inadvertently endorse that aspect of the decision.

Specifically, in *United States ex rel. Kirk v. Schindler Elevator Corporation*, 601 F.3d 94 (2d Cir. 2010), the Second Circuit assumed – apparently without any significant briefing or argument on the point – that the Fraud Enforcement And Recovery Act of 2009 ("FERA"), 123 Stat. 1617, 1621 (2009), which amended 31 U.S.C. § 3729(a)(2) (2009) of the False Claims Act ("FCA"), applies retrospectively to any *case* pending on the applicable effective date—June 7, 2008. Virtually every other court to consider this issue, however, has concluded that FERA applies retrospectively, not to *cases* pending on that date, as *Kirk* held, but, consistent with FERA's language, to *claims for payment*, being pursued subject to the False *Claims* Act, pending on that date.

As a publicly traded company that collaborates with the federal government on a variety of public projects, UTC has an interest in judicial decisions interpreting the False Claims Act. Moreover, UTC is party to a case within the Second Circuit, where the issue – whether FERA's retroactivity clause describes "cases" or "claims" – has already arisen. *See, e.g.*, *United States ex rel. Drake v. NSI, Inc.*, -- F. Supp. 2d --, No. 3:94-cv-963, 2010 WL 3417854 (D. Conn. Aug. 26, 2010) (following *Kirk* and holding that FERA applies retrospectively to a case pending on June 7, 2008).

Thus, while the issue that UTC identifies here is not part of the question presented for appeal, and is apparently not a focus of any of the parties in this case, UTC alerts the Court to its existence because of

the possibility that if the Court were unaware of the issue, it might unintentionally endorse the Second Circuit's view.

STATEMENT OF THE CASE

In *Kirk*, the Second Circuit resolved several legal issues, including the public disclosure bar issue that is the subject of the writ of certiorari. But as a preliminary matter, it addressed in passing whether FERA's amendments to § 3729(a)(2) – which took effect as if enacted on June 7, 2008, and which apply to all "claims" pending on or after that date – could be applied retrospectively. 601 F.3d at 113. The court assumed that the word "claims" in the effective date provision applied to all *cases* pending on that date. *Id.* While Kirk's *case* was pending, the allegedly fraudulent claims for payment were not. Thus, this assumption was critical to whether the FERA amendments applied.

The Second Circuit concluded that the term "claims" meant "cases" with little analysis, *see id.* at 113, despite that it was interpreting an amendment to the False *Claims* Act, 31 U.S.C. § 3729 *et seq.* (2009), in which the concept of "claim" is obviously very different from the claims that are pursued as part of a lawsuit. The court did not, for instance, examine whether the effective date was susceptible to different interpretations, nor did it note that the FCA expressly defines "claim" in a contrary manner, 31 U.S.C. § 3729(b)(2), as virtually every other court to consider the issue has recognized.[2] Because

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[2] *See, e.g., Hopper v. Solvay Pharms., Inc.*, 588 F.3d 1318, 1327 n.3 (11th Cir. 2009); *United States ex rel. Carpenter v. Abbott Labs., Inc.*, -- F. Supp. 2d --, C.A. No. 07-10918, 2010 WL 2802686, at *5 (D. Mass. July 16, 2010); *United States ex rel.*

"claim" is a defined term under the FCA that means a claim for payment, 31 U.S.C. § 3729(b)(2), case law is "almost uniformly"[3] in agreement that FERA's retrospective reach is limited to claims for payment that were pending on or after June 7, 2008. One court of appeals, however, has cited *Kirk* and without much discussion adopted its holding in a footnote, which suggests that a deep circuit split may be developing.[4]

SUMMARY OF ARGUMENT

Congress expressly limited the retrospective application of FERA such that the amendments to 31 U.S.C. § 3729(a)(2) would take effect "as if enacted

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Burroughs v. Cent. Ark. Dev. Council, No. 4:08CV2757, 2010 WL 1542532, at *2-3 (E.D. Ark. Apr. 19, 2010); *United States ex rel. Gonzalez v. Fresenius Med. Care N. Am.*, No. EP-07-CV-247, 2010 WL 1645971, at *9 (W.D. Tex. Mar. 31, 2010); *United States ex rel. Pilecki-Simko v. Chubb Inst.*, C.A. No. 06-3562, 2010 WL 1076228, at *4 n.10 (D.N.J. Mar. 22, 2010); *United States ex rel. Baker v. Cmty. Health Sys., Inc.*, -- F. Supp. 2d --, Civ. No. 05-279, 2010 WL 1740624, at *16-17 (D.N.M. Mar. 19, 2010); *United States ex rel. Putnam v. E. Idaho Reg'l Med. Ctr.*, 696 F. Supp. 2d 1190, 1196 (D. Idaho 2010); *Mason v. Medline Indus., Inc.*, -- F. Supp. 2d --, C.A. No. 07C5615, 2010 WL 653542, at *3 (N.D. Ill. Feb. 18, 2010); *United States ex rel. Parato v. Unadilla Health Care Ctr., Inc.*, C.A. No. 5:07-cv-76, 2010 WL 146877, at *4 n.4 (M.D. Ga. Jan. 11, 2010); *United States ex rel. Sanders v. Allison Engine Co.*, 667 F. Supp. 2d 747, 751-752 (S.D. Ohio 2009); *United States v. Sci. Applications Int'l Corp.*, 653 F. Supp. 2d 87, 106-107 (D.D.C. 2009).

[3] *See Carpenter*, 2010 WL 2802686, at *5 (noting "case law has almost uniformly interpreted 'claims' to mean claims for reimbursement").

[4] *See United States ex rel. Steury v. Cardinal Health, Inc.*, No. 09-20718, 2010 WL 4276073, at *7 n.1 (5th Cir. Nov. 1, 2010).

on June 7, 2008" and would apply to any "claims" pending on or after that date. *See* FERA § 4(f)(1). The Second Circuit, however, took the word "claims" to mean "cases" (or, at least, claims that were being pursued in court as part of a case), and thereby concluded that FERA applied to any False Claims Act case pending on or after June 7, 2008. The Second Circuit's decision is inconsistent with FERA's plain language – and the decisions of the overwhelming majority of courts having addressed the issue – for a number of reasons.

First, the FCA expressly defines a "claim" to mean "any request or demand . . . for money or property . . . ," 31 U.S.C. § 3729(b)(2), not a case. Second, Congress used the word "claims" in § 4(f)(1) and "cases" in § 4(f)(2). The use of "claims" in one subsection and "cases" in the next demonstrates that the drafters knew how to distinguish the two terms and that Congress acted intentionally to limit § 4(f)(1) to pending claims for payment. Third, interpreting "claims" to mean claims for payment, not cases, is consistent with the structure of FERA's effective-date provision, which provides a general rule of prospectivity addressed to when the *conduct* at issue occurred. Fourth, even if the word "claims" was ambiguous, FERA's legislative history dispels any confusion that Congress meant to write cases: In the Senate Report, the drafters referred to "claims" to mean claims for payment and "cases" to mean civil actions.

ARGUMENT

I. THE SECOND CIRCUIT'S DECISION MISINTERPRETS THE EFFECTIVE DATE IN THE FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009.

Before FERA, § 3729(a)(2) prohibited a person from knowingly making or using a "false record or statement to get a false or fraudulent claim paid or approved by the Government." 31 U.S.C. § 3729(a)(2). This Court, in *Allison Engine Co. v. United States ex rel. Sanders*, concluded that § 3729(a)(2) required proof that "defendant made a false record or statement for the purpose of getting 'a false or fraudulent claim paid or approved by the Government.'" 553 U.S. 662, 671, 128 S. Ct. 2123, 170 L. Ed. 2d 1030 (2008). Merely proving "that a false statement resulted in the use of Government funds to pay a false or fraudulent claim," was not enough. *Id* at 668. Congress enacted FERA to legislatively overrule *Allison Engine*.[5]

When Congress enacted FERA, it provided that FERA would only apply to *conduct* that occurred after the date of enactment, *except* that the amendments to § 3729(a)(2) would take effect "as if enacted on June 7, 2008" – two days before *Allison Engine* was decided – and would apply to any "claims" pending on or after that date. *See* FERA § 4(f)(1). Specifically, FERA provides:

> **Effective Date and Application**. – The amendments made by this section shall take effect on

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[5] *See* S. Rep. No. 111-10, at 10 (2009) (noting FERA "amends the FCA to clarify and correct erroneous interpretations of the law that were decided in *Allison Engine Co. v. United States ex rel. Sanders*, 128 S. Ct. 2123 (2008) . . .").

> the date of enactment of this Act and shall apply to conduct on or after the date of enactment, except that –
>
> (1) [The amendments to § 3729(a)(2)] . . . shall take effect as if enacted on June 7, 2008, and apply to all *claims* under the False Claims Act (31 U.S.C. 3729 *et seq.*) that are pending on or after that date; and
>
> (2) section 3731(b) of title 31, as amended by subsection (b); section 3733, of title 31, as amended by subsection (c); and section 3732 of title 31, as amended by subsection (e); shall apply to *cases* pending on the date of enactment.

See § 4(f), 123 Stat. at 1625 (emphasis added). A plain reading of this effective date provision is that the amendments to § 3729(a)(2) apply only to *conduct* (*i.e.*, using or making a false statement material to a false claim) on or after June 7, 2008, including those claims pending on that date. Most courts have so held.

In *Kirk*, however, the Second Circuit applied FERA to allegedly false claims that were not pending on or after June 7, 2008, because it interpreted FERA's effective date as meaning "cases" (or perhaps claims in False Claims Act cases) not the underlying false "claims" being pressed for payment. 601 F.3d at 113. The plain language of FERA, however, calls for a different conclusion, for several reasons.

First, the FCA itself defines "claim" to mean "any request or demand . . . for money or property. . . . ," 31 U.S.C. § 3729(b)(2), not a case.

Second, Congress used "claims" in § 4(f)(1) and then, immediately after, used the word "cases" in the

next subsection. *Compare* FERA § 4(f)(1) (applies to pending "claims") *with* FERA § 4(f)(2) (applies to pending "cases"). The use of "claims" in one subsection and "cases" in the next demonstrates that the drafters knew how to distinguish the two terms and that Congress was referring in § 4(f)(1) to pending claims for payment. *See Russello v. United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal quotation marks omitted).

Third, interpreting "claims" to mean the underlying false claims for payment, not cases that include False Claims Act claims, is consistent with the structure of FERA's effective-date provision. That provision provides a general rule of prospectivity addressed to when the *conduct* at issue occurred. As a general rule, FERA's amendments only apply to "conduct" occurring after the date of FERA's enactment. *See* FERA § 4(f). The conduct at issue in an FCA case is the submission of, and pursuit of payment on, false claims. With § 4(f)(1), Congress simply adjusted the controlling date for § 3729(a)(2) so that the amendments would take effect "as if enacted on June 7, 2008" and apply to conduct on or after that date. FERA § 4(f)(1). Because Congress was concerned with conduct, these amendments helpfully clarified that the relevant *conduct* included continuing to pursue claims for payment on or after June 7, 2008 (and did not require, for example, that the claims first be submitted after that date).

Fourth, review of FERA's legislative history clarifies that Congress meant claims for payment. In the Senate Report for the amendments to § 3729(a)(2), the drafters referred to "claims" to mean claims for payment and "cases" to mean civil actions. *Sci. Applications Int'l Corp.*, 653 F. Supp. 2d at 107 ("The Senate Report's explanation of FERA's amendments to the FCA similarly utilizes 'claims' to refer to a defendant's request for payment and 'cases' when discussing civil actions for FCA violations.") (citing S. Rep. No. 110-10 (2009)).[6]

CONCLUSION

Because, at a minimum, a substantial issue exists whether the Second Circuit correctly assumed that FERA's effective date applied to "cases" rather than "claims" for payment pending on the referenced date, this Court should be alert to the issue in connection with its consideration of this appeal.

Respectfully submitted,

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[6] The district court inadvertently cited Senate Report 110-10; the correct report for FERA is Senate Report 111-10.